

ARNOLD'S GUIDE
FOR
BUSINESS
CORPORATIONS
IN THE
STATE OF NEW YORK

FOURTH EDITION

No. 1802

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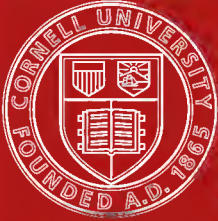
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NEW YORK BUSINESS CORPORATIONS

INCLUDING

Business Corporations Laws, General Corporation Law, Stock Corporation Law, General Construction Law, Joint-Stock Association Law and all provisions affecting Corporations embraced in the State Constitution, Tax Law, Penal Law, Labor Law, General Business Law, Personal Property Law, Lien Law, Negotiable Instruments Law, Real Property Law, Codes of Civil and Criminal Procedure;

TABLES OF ORGANIZATION FEES, EXPENSES AND FRANCHISE TAXES

and the

FEDERAL CORPORATION TAX LAW

FOURTH EDITION—REVISED AND ENLARGED
WITH NOTES AND FORMS

BY

JOSEPH A. ARNOLD
OF THE NEW YORK BAR

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1911

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PREFACE TO FOURTH EDITION

The laws of the State of New York pertaining to stock corporations organized for commercial purposes, other than banking, insurance, transportation and railroad corporations, were assembled by the laws of 1890 into an act entitled "The Business Corporation Law." The Consolidated Laws of 1909, which mark an epoch in the legislative and legal history of the State of New York, retained as Chapter Four the Business Corporations Law with slight changes. All corporations formed for business purposes, including manufacturing, mining, real estate and all corporations of a mercantile character, must be organized under the Business Corporations Law which is given in full in this book with all amendments thereto up to the close of the legislative session of 1911.

The Stock Corporation Law relates to the powers, rights and management of stock corporations, and to the rights, duties and liabilities of directors, officers and stockholders. Its provisions are applicable to business corporations.

The General Corporation Law, which pertains to all corporations, was enlarged in 1909 by transferring to it many sections of the Code of Civil Procedure and by the addition of independent statutes. See Consolidators' Note, page 21. Most of the sections of the former General Corporation Law and Stock Corporation Law were re-numbered, and not a few were separated into two or more sections. For purposes of ready reference the Comparative Section Tables on pages xxx to xxxiii, inclusive, will be found useful. These tables will also enable the reader quickly to locate the sections of the General Corporation Law and Stock Corporation Law to which matter from the Code of Civil Procedure has been transferred.

Since 1901 the rights and powers of business corporations have been greatly amplified, and the stringent liabilities of directors and stockholders have been done away with or lessened. While the first cost of incorporation is greater in New York than elsewhere, the annual state tax of a New York corporation is lower than that of a foreign corporation, similarly situated, which does business within the state.

The corporation laws of New York are without doubt the best adapted to the requirements of capital invested in the state, and render New York a desirable domicile for corporations conducting all or a substantial part of their business or operations therein.

JOSEPH A. ARNOLD.

22 William Street, New York.

January 2, 1912.

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EXTRACTS FROM NEW YORK CONSTITUTION

ARTICLE III

Cases in which private and local bills shall not be passed, etc.

§ 18. The Legislature shall not pass a private or local bill in any of the following cases:

* * * * *

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

* * * * *

The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. * * * *

Certain sections not to apply to commission bills.

§ 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the Legislature by commissioners who have been appointed pursuant to law to revise the statutes.

[xxviii]

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ARTICLE VIII

Formation of corporations.—Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

Dues of corporations.—§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Corporations, definition of term.—§ 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

* * * * *

Credit or money of the State not to be given.—§ 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. * * * *

Limitation of indebtedness of counties, cities, towns and villages, etc.—§ 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to, or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. * * * *

COMPARATIVE SECTION TABLES

Showing Sections of former General Laws and Corresponding
Sections of Consolidated Laws.

BUSINESS CORPORATIONS LAW.

Laws	Chapter	Section		Section of Consoli- dated Law
1892	691	1	Corresponds to.....	1
		2	do	†2
		3	do	3
		4	do	4
		5	do	5
		6	do	6
		*7	do	
		8	do	7
		9	do	8
		10	do	9
		11	do	10
		12	do	11
		13	do	12
		14	do	13
		15	do	14
		16	do	15
		17	do	16

* Repealed by L. 1895, Ch. 671.

† Part, and § 10, General Corporation Law, part.

GENERAL CORPORATION LAW.

Laws	Chapter	Section		Section of Consoli- dated Law
1892	687	1	Corresponds to.....	1
		†2	do	2
		3	do	3
		4	do	4
		5	do	*5
		6	do	*6
		7	do	7
		8	do	8
		9	do	9
		**10	do	10
		11	do	11
		12	do	12
		13	do	13
		14	do	14
		†15	do	15
		16	do	*16
		17	do	20
		18	do	21
		19	do	22
		20	do	23-25
		21	do	26
		22	do	27
		23	do	28
		24	do	29
		25	do	30
		26	do	31
		27	do	32
		28	do	33
		29	do	34
		30	do	35
		31	do	36
		32	do	37-41
		33	do	321
		34	do	330
		35	do	
		†36	do	331
		†37	do	
		38	do	42
		39	do	43
		40	do	320
		41	do	44

* Other matter incorporated. See notes to sections.

** Part only. See § 2, Business Corporations Law.

† Part only.

‡ This section was neither incorporated nor repealed.

STOCK CORPORATION LAW.

Laws	Chapter	Section		Section of Consoli- dated Law
1892	688	1	Corresponds to.....	1, 5
		2	do	6
		3	do	9
		4	do	10
		5	do	11
		6	do	12
		7	do	14
		8	do	7
		20	do	25
		21	do	26
		22	do	27
		23	do	28
		*24		
		25	Corresponds to.....	29
		26	do	51
		27	do	30
		28	do	31
		29	do	32
		30	do	34
		31	do	35
		32	do	18
		33	do	16, 17
		†34		
		40	Corresponds to.....	8, 50, 52
		41	do	53
		42	do	55
		43	do	54
		44	do	62
		45	do	63
		46	do	64
		47	do	61
		48	do	66
		*49		
		50	Corresponds to.....	67
		51	do	68
		52	do	69
		53	do	33
		54	do	56-58
		55	do	59
		56	do	65
		57	do Gen. Corp. Law...	221
		58	do Stock Corp. Law..	15
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		60	do Stock Corp. Law..	70
		61	do Gen. Corp. Law...	220
		62	do Stock Corp. Law..	60

* Repealed by L. 1901, Ch. 354, § 4.

† Repealed by L. 1909, Ch. 61, §§ 80, 81.

CODE OF CIVIL PROCEDURE.

Code.	General Corporation Law.	Code.	General Corporation Law.
§ 432, part..	§ 16, part.	§ 2414, part...	§ 63.
715, part..	225-227.	2415.....	64.
716, part..	243.	2416.....	65.
1781.....	90, part.	2419.....	170.
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1804.....	300.	2431.....	177.
1805.....	301.		195.
1806.....	302.	2431a.....	277.
1807.....	303.	2431b.....	268.
1808.....	304.	3390*.....	70.
1809, part...	305.	3391.....	71.
1810.....	306.	3392.....	72, part.
1811.....	307.	3393, part...	72, part.
1812, part...	308.	3393, part...	73.
1813, part...	309.	3394.....	74.
2411.....	60.	3395.....	75.
2412, part...	61.	3396.....	76.
2413, part...	62.	3397.....	330.

* See also § 8, Joint-Stock Association Law.

NOTE.—Only sections of the Code of Civil Procedure are given which were incorporated into the General Corporation Law in whole or in part.

BUSINESS CORPORATIONS LAW

Laws of 1909, Chapter 12, entitled "AN ACT in relation to business corporations, constituting Chapter Four of the Consolidated Laws."

Article 1. Short title (§ 1).

2. General provisions (§§ 2-16).

3. Laws repealed, when to take effect (§§ 25, 26).

ARTICLE 1

Short Title

Section 1. Short title.

§ 1. Short title.—This chapter shall be known as the "Business Corporations Law."

Derivation.—L. 1890, Ch. 567, § 1; L. 1892, Ch. 691, § 1; L. 1895, Ch. 671, § 1.

ARTICLE 2

General Provisions

Section 2. Incorporation.

3. Restrictions upon commencement of business.

4. Reorganization of existing corporations.

5. Payment of capital stock.

6. Full liability corporations.

7. Consolidation of corporations.

8. Submission of consolidation agreement to stockholders.

9. Powers of consolidated corporations.

10. Transfer of property of old corporations to consolidated corporations.

11. Rights of creditors of old corporations.

12. District steam corporations.

13. Examination of meters by agent of district steam corporations.

14. Entry by agent of district steam corporation to cut off steam.

15. Water companies.

16. Improvement corporations; right of condemnation.

§ 2. Incorporation.—Except as provided in section two-a of this chapter, three or more persons may become a stock

NOTE.—The original Business Corporations Law appeared in Chapter 41 of the General Laws. L. 1890, Ch. 567.

corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporations laws, or an educational institution or corporation which may be incorporated as provided in the education law, by making, signing, acknowledging and filing a certificate which shall contain:

Amended by L. 1909, Ch. 484, § 1, in effect May 25, 1909.

1. The name of the proposed corporation.
2. The purpose or purposes for which it is to be formed.
3. The amount of the capital stock, and if any portion be preferred stock, the preferences thereof.
4. The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital not less than five hundred dollars, with which said corporation will begin business.
5. The city, village or town in which its principal business office is to be located. If it is to be located in the city of New York, the borough therein in which it is to be located.
6. Its duration.
7. The number of its directors, not less than three.
8. The names and post-office addresses of the directors for the first year.
9. The names and post-office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

Any certificate of incorporation filed, prior to April twenty-second, eighteen hundred and ninety-six, under the provisions of the business corporations law theretofore in force which shall contain the names and post-office addresses, either of the subscribers to the stock or of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the cor-

poration, shall be deemed to have complied with the requirements of section two, subdivision nine of said law.*

If meetings of the board of directors are to be held only within the state the certificate or by-laws must so provide.†

Derivation.—L. 1890, Ch. 567, § 2; L. 1892, Ch. 691, § 2; L. 1895, Ch. 671; L. 1896, Ch. 369, and Ch. 460; L. 1901, Ch. 520; L. 1903, Ch. 525; L. 1904, Ch. 446, § 1; L. 1907, Ch. 646, § 1.

Compare L. 1811, Ch. 67, §§ 1, 2; L. 1815, Ch. 47, § 1; L. 1816, Ch. 58, §§ 1, 2; L. 1817, Ch. 223; L. 1818, Ch. 67; L. 1819, Ch. 102; L. 1821, Ch. 14; L. 1848, Ch. 40, §§ 1, 2; L. 1851, Ch. 14; L. 1853, Ch. 117; L. 1853, Ch. 333, § 1; L. 1855, Ch. 301; L. 1857, Ch. 29, §§ 1, 3; L. 1857, Ch. 262; L. 1863, Ch. 63; L. 1864, Ch. 337; L. 1865, Ch. 234; L. 1865, Ch. 307; L. 1866, Ch. 371; L. 1866, Ch. 799, § 1; L. 1866, Ch. 838; L. 1867, Ch. 509; L. 1868, Ch. 781; L. 1869, Ch. 605; L. 1870, Ch. 773; L. 1871, Ch. 535, § 1; L. 1871, Ch. 657, § 1; L. 1872, Ch. 248; L. 1872, Ch. 426; L. 1872, Ch. 609; L. 1872, Ch. 820; L. 1873, Ch. 616; L. 1873, Ch. 814; L. 1874, Ch. 143; L. 1874, Ch. 149; L. 1875, Ch. 113; L. 1875, Ch. 365; L. 1875, Ch. 611, §§ 1, 3; L. 1877, Ch. 374, § 1; L. 1879, Ch. 290; L. 1880, Ch. 85; L. 1880, Ch. 241, § 1; L. 1881, Ch. 58, 232, and 589; L. 1881, Ch. 351; L. 1881, Ch. 650; L. 1882, Ch. 273; L. 1882, Ch. 309; L. 1883, Ch. 238; L. 1883, Ch. 240; L. 1884, Ch. 267; L. 1885, Ch. 84; L. 1885, Ch. 535; L. 1888, Ch. 313; L. 1890, Ch. 23; L. 1890, Ch. 119; L. 1890, Ch. 508.

See 119 App. Div. 749, *aff'd* in 189 N. Y. 560; 46 App. Div. 20, *aff'd* 167 N. Y. 587.

Subscribers to certificate of incorporation.—At least two-thirds of the subscribers to the certificate of incorporation must be citizens of the United States, and at least one of them a resident of the State of New York. All of the subscribers must be natural persons of full age. See § 4, General Corporation Law.

In addition to the names and post-office addresses of the subscribers the certificate of incorporation must state the number of shares each subscriber agrees to take. There is no provision specifying the amount of shares to be subscribed for or mentioned in the certificate.

The certificate of incorporation should be executed and acknowledged in triplicate; one to file with the Secretary of State, one to file with the county clerk, and one for future use by the corporation. A certified copy, instead of a duplicate original, may be filed with the county clerk. See § 5, General Corporation Law. If

* This paragraph was incorporated into the Consolidated Laws from L. 1896, Ch. 369, § 2.

† Consolidators' Note.—“Last sentence omitted from section because provided for in General Corporation Law, § 10.”

executed without the State of New York, the certificate of incorporation must be acknowledged before a New York commissioner of deeds or an officer empowered to take acknowledgments of deeds, whose authority must be authenticated by the certificate of a proper local official.

Name.—The name of a corporation must not be that of another existing domestic corporation, or one so nearly resembling it as to be calculated to deceive. § 6, General Corporation Law. No corporation may have the word trust, bank, banking, insurance, assurance, indemnity, guarantee, guaranty, title, savings, investment, loan or benefit as part of its name, except a corporation formed under the banking law or the insurance law. See § 6, General Corporation Law. See also § 15, General Corporation Law, as to similar restrictions against foreign corporations.

Purposes.—The purposes of a business corporation may be any lawful ones, and may be altered. See § 18, Stock Corporation Law.

Capital stock.—The capital stock may be any amount exceeding \$500, the minimum requirement. One-half of the capital must be paid in within one year from incorporation. See § 5, Business Corporations Law. The capital stock may be increased or reduced. § 62, Stock Corporation Law. One or more classes of preferred stock may be issued if the certificate of incorporation provide, or with the consent of the "holders of record of two-thirds of the capital stock, given at a meeting called for that purpose." § 61, Stock Corporation Law. If the certificate of incorporation authorizes preferred stock, the amount thereof and the amount of the different classes of preferred stock, and their priority, character, etc., should be clearly set forth. Preferred stock may be exchanged for common stock by a two-thirds vote of the directors upon the written request of the holders of any preferred stock, "upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby." *Idem*.

Number and par value of shares.—The certificate must state the number of shares, the par value of each share (which must not be less than five nor more than one hundred dollars), and the amount of capital (which must not be less than five hundred dollars), with which the corporation will begin business. See § 2, Business Corporations Law, *supra*. A corporation is forbidden to incur any debt until this amount is paid either in money or property. See § 3, Business Corporations Law. The number and par value of shares may be changed. See § 65, Stock Corporation Law.

Principal business office.—A corporation is taxed on personality where its principal business office is located. See § 11, Tax Law.

This place may be changed at any time. § 13, Stock Corporation Law. For definition, see § 3, subd. 9, General Corporation Law. See 87 Hun, 341, aff'd in 147 N. Y. 715; 91 Hun, 594; 20 App. Div. 166; and see also 46 App. Div. 20, 623, aff'd in 167 N. Y. 587.

Duration.—The duration of a corporation, formerly restricted to fifty years, is now unlimited. If the period is not specified, the life of the corporation is deemed to be perpetual. See § 11, subd. 1, General Corporation Law. At any time prior to its expiration the life of a corporation may be extended. § 37, General Corporation Law. The life of a consolidated corporation is restricted to fifty years. § 7, Business Corporations Law.

Directors.—The number of directors must be not less than three. See § 2, subd. 7, Business Corporations Law. The number of directors may be changed at any time. § 26, Stock Corporation Law. Only one of the directors is required to be a resident of the State of New York. § 34, General Corporation Law. Directors must be stockholders unless the certificate of incorporation or a stockholders' by-law otherwise provide. § 25, Stock Corporation Law. At least one-fourth of the directors of a stock corporation must be chosen annually. Vacancies in the board of directors are filled as may be prescribed in the by-laws. *Idem*. Directors hold over until their successors are elected. § 28, General Corporation Law.

Directors for the first year.—The directors designated to serve for the first year need not be subscribers to the certificate of incorporation. It has been held that they need not even be stockholders (163 N. Y. 423); but see § 25 of the Stock Corporation Law which requires all directors to be stockholders unless otherwise provided for in the certificate of incorporation or in a by-law adopted at a stockholders' meeting.

For form of Certificate of Incorporation, see Form No. 1.

For form of Subscription Agreement, see Form No. 2.

Amended and supplemental certificates.—For manner of amending and correcting certificates of incorporation, see § 7, General Corporation Law.

Alteration, suspension and repeal of charter.—See § 320, General Corporation Law.

Filing and recording.—An original and amended certificate of incorporation must be filed and recorded in the office of the Secretary of State, and a certified copy of such certificate or a duplicate original must be filed and recorded in the office of the clerk of the county in which the principal office is to be located. See § 5, General Corporation Law.

Fees.—The fees of the Secretary of State are ten dollars for filing and fifteen cents a folio for recording a certificate of incorporation.

County clerks' fees are ten cents a folio for recording and six cents for filing.

See Table of Fees, *post*.

Tax upon organization.— Before a certificate of incorporation will be filed, the organization tax of one-twentieth of one per cent. on the capital stock must be paid. The minimum organization tax is five dollars. § 180, Tax Law. A receipt for the tax must be obtained from the State Treasurer before the certificate of incorporation will be filed by the Secretary of State. The amount of the organization tax should be remitted directly to the State Treasurer at the same time the certificate of incorporation is forwarded to the Secretary of State, together with his fees. All payments are required to be made in currency, or by certified check, bank draft, postal or express money order. The State Treasurer thereupon transmits a duplicate receipt to the person paying the tax.

Tax upon consolidation.— See § 180, Tax Law.

Tax upon increase of capital.—*Idem*.

§ 2-a. Incorporating for the purpose of conducting law business, et cetera, prohibited.— No corporation shall be organized or created under the provisions of this chapter for the purpose or purposes of conducting any branch of the practice of law or of retaining or employing an attorney or attorneys to furnish legal advice, draw legal papers or perform legal services of any kind or description, either directly for the person, persons or corporation for whose use such services are rendered, or for the corporation retaining such attorney in compliance with any contract of employment of the corporation or of the attorney made by the corporation with any other person, persons or corporation. The statement of the purpose or purposes of a corporation, in any certificate filed under the provisions of this chapter, in whatsoever language the same may be set forth, shall not be held or construed to confer on the corporation the power to transact any business specified in this section as a purpose for which the creation of a corporation under this chapter is prohibited; and particularly when the stated objects of a corporation include the collection of debts or accounts, in words or substance, they shall not be construed to include the employment of

furnishing of attorneys to prosecute any action or pursue any legal or equitable remedy in aid of such collections.

Added by L. 1900, Ch. 484. See 198 N. Y. 479.

§ 3. Restrictions upon commencement of business.—No such corporation shall incur any debts until the amount of capital specified in its certificate of incorporation, as the amount of capital with which it will begin business, shall have been paid in in money or property.

Derivation.—L. 1890, Ch. 567, § 3; L. 1892, Ch. 691, § 3; L. 1895, Ch. 671, § 1.

Compare L. 1875, Ch. 611, § 7.

§ 4. Reorganization of existing corporations.—Any stock corporation heretofore organized, except a moneyed or transportation corporation, or a corporation the business of which partakes of the nature of banking or insurance, may reincorporate under this chapter in the following manner: The directors of the corporation shall call a meeting of the stockholders thereof by publishing a notice, stating the time, place and object of the meeting, signed by at least a majority of them, in a newspaper of the county in which its principal business office is situated, once a week, for at least three successive weeks, and by serving upon each stockholder, at least three weeks before the meeting, a copy of such notice either personally or by depositing it in the post-office, postage prepaid, addressed to him at his last known post-office address. The stockholders shall meet at the time and place specified in the notice and organize by choosing one of the directors chairman, and a suitable secretary, and shall then take a vote of those present in person or by proxy upon the proposition to reincorporate under this chapter, and if votes representing a majority of all the stock of the corporation shall be cast in favor of the proposition, the officers of the meeting shall execute and acknowledge a certificate of the proceedings, which certificate shall also contain the statements required by section two of this chapter, and shall be filed in the offices where certificates of incorporation under

this chapter are required to be filed. From the time of such filing such corporation shall be deemed to be a corporation organized under this chapter, and if originally organized or incorporated under a general law of this state, it shall have and exercise all such rights and franchises as it has heretofore had and exercised under the laws pursuant to which it was originally incorporated, and such reorganization shall not in any way affect, change or diminish the existing liabilities of the corporation.

Derivation.— L. 1890, Ch. 567, § 5; L. 1892, Ch. 691, § 4; L. 1895, Ch. 671, § 1.

Compare L. 1875, Ch. 611, § 32; L. 1880, Ch. 187, § 1; L. 1885, Ch. 540, § 1.

An organization tax is not required from corporations reorganizing under § 4. See 13 App. Div. 50; 118 App. Div. 624.

§ 5. Payment of capital stock.— One-half of the capital stock of every such corporation shall be paid in within one year from its incorporation, or the corporation shall be dissolved, and the directors within thirty days after such payment shall make a certificate of the fact of such payment, which shall be signed and acknowledged by a majority of the directors, and verified by the president or vice-president and secretary or treasurer, and filed in the offices where the certificates of incorporation are filed. The dissolution of any such corporation for any cause shall not take away or impair any remedy against it, its stockholders or officers, for any liabilities incurred previous to its dissolution.

Derivation.— L. 1890, Ch. 567, § 6; L. 1892, Ch. 691, § 5.

Compare L. 1848, Ch. 40, §§ 10, 11; L. 1875, Ch. 611, §§ 37, 38.

See 143 N. Y. 476; 131 N. Y. 140; 124 N. Y. 25; 95 N. Y. 93; 80 N. Y. 599.

Until the capital stock is fully paid in each stockholder is personally liable to creditors to the extent of the amount unpaid on the stock held by him, for corporate debts contracted while such stock is held by him. See § 56, Stock Corporation Law.

The time of payment of subscriptions to the capital stock is determined by the board of directors. See § 54, Stock Corporation Law.

No certificate of full payment is now necessary.

For form of Certificate of Payment, see Form No. 3.

§ 6. **Full liability corporations.**— Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed, a supplemental certificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors, and the written consent of all the stockholders of the corporation, authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation all the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment.

Derivation.— L. 1890, Ch. 567, § 7; L. 1892, Ch. 691, § 6.

Compare L. 1875, Ch. 611, § 34.

This section is governed by § 59, Stock Corporation Law. See 113 App. Div. 782. See also 82 App. Div. 117; 87 App. Div. 312. See Form No. 1.

§ 7. **Consolidation of corporations.**—Any two or more corporations organized under the laws of this state for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective corporations may enter into and make an agreement signed by a majority of their respective boards of directors and under their respective corporate seals; for the consolidation of such corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors who shall manage its affairs, not less than three, the names and post-office addresses of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county or counties, in which its operations are to be carried on, the name of the town or city and county in this state in which its principal place of business is to be situated, the amount of its capital stock, which shall not be larger in amount than the fair aggregate value of the property, franchises and rights of such corporations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and if such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this state, the agreement shall so state, with such other particulars as they may deem necessary. ●

Former § 8, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 13; L. 1892, Ch. 691, § 8; L. 1895, Ch. 671; L. 1896, Ch. 369 and Ch. 460; L. 1899, Ch. 201, § 1; L. 1901, Ch. 520, § 2.

Compare L. 1867, Ch. 960, § 1; L. 1877, Ch. 374, § 2; L. 1873, Ch. 616, § 1; L. 1884, Ch. 367, § 1.

See 133 N. Y. 336; 128 N. Y. 591; 62 Hun, 269; 57 Hun, 486.

Amount of tax.—An organization tax of one-twentieth of one

per cent. is required, based upon the capital in excess of the aggregate amount of capital of the consolidating corporations.

For form of Consolidation Agreement, etc., see Form No. 21a.

§ 8. Submission of consolidation agreement to stockholders.—Such agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each at his last known post-office address, and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties in this state in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations, and a sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the office of the secretary of state, and the other in the office of the clerk of the county where the principal business office of the new corporation is to be situated in this state, and thereupon such corporations shall be merged into the new corporation specified in such agreement, to be known by the corporate name therein mentioned, and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the supreme court at any special term thereof held in the district in which any county is situated in which such new corporation may have its place

of business, upon at least eight days' notice to the new corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation. Where any consolidation has been heretofore or shall be hereafter effected pursuant to the laws of this state, and the holders of ninety per centum of the capital stock of each of such corporations have voted in favor of such agreement to consolidate, if any stockholder not voting in favor of such consolidation shall fail to exchange his stock for stock of such new corporation within sixty days after this act shall go into effect, or, in case of a consolidation hereafter effected, within sixty days after he shall have become entitled to make such exchange, such new corporation may, at any time thereafter, upon at least eight days' notice to such stockholder, to be given personally, within the state, if possible, and if not, then in such manner as the court shall direct, apply to the court, as hereinbefore provided, for the appointment of three persons to appraise the value of such stock at the time of the expiration of such sixty

days. Upon the completion of the appraisal in the manner hereinbefore provided for, and the payment by such new corporation of the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock, and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

Former § 9, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 14; L. 1892, Ch. 691, § 9; L. 1902, Ch. 438, § 1.

Compare L. 1867, Ch. 960, §§ 2, 3; L. 1873, Ch. 616, §§ 2, 3; L. 1884, Ch. 367, §§ 2, 3.

Filing and recording fees.—The same fees are payable for filing and recording these certificates as are required for filing and recording original certificates of incorporation. See Table of Fees, *post*.

§ 9. Powers of consolidated corporations.—Such new corporation in addition to the general powers of corporations shall enjoy the rights, franchises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this chapter so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct.

Former § 10, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 15; L. 1892, Ch. 691, § 10.

Compare L. 1867, Ch. 960, § 4; L. 1873, Ch. 616, § 4; L. 1884, Ch. 367, §§ 4, 7.

See Merger, § 15, Stock Corporation Law, *post*.

§ 10. Transfer of property of old corporations to consolidated corporations.—Upon the consummation of such act of consolidation, all the rights, privileges, franchises and interests of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to

either of them, as well as all stock subscriptions and other things in action belonging to either of them, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this chapter, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation; and all the rights, privileges, franchises and property of the corporations, parties to any consolidation heretofore made under this chapter, shall vest as fully in the new corporation thereby created as they were vested in the corporations, parties to such consolidations.

Former § 11, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 16; L. 1892, Ch. 691, § 11; L. 1902, Ch. 457, § 1.

Compare L. 1867, Ch. 960, § 5; L. 1873, Ch. 616, § 5; L. 1884, Ch. 367, § 5.

§ 11. Rights of creditors of old corporations.—The rights of creditors of any corporation that shall be so consolidated shall not in any manner be impaired, nor any liability or obligation for the payment of any money due or to become due to any person or persons, or any claim or demand for any cause existing against any such corporation or against any stockholder thereof be released or impaired by any such consolidation; but such new corporation shall succeed to and be held liable to pay and discharge all such debts and liabilities of each of the corporations consolidated in the same manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages, and the stockholders of the respective corporations consolidated shall

continue, subject to all the liabilities, claims and demands existing against them as such, at or before the consolidation; and no action or proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall abate or be discontinued by reason of such consolidation, but may be prosecuted to final judgment, as though no consolidation had been entered into; or such new corporation may be substituted as a party in place of any corporation so consolidated, by order of the court in which such action or proceeding may be pending.

Former § 12, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 17; L. 1892, Ch. 691, § 12.

Compare L. 1867, Ch. 960, § 6; L. 1873, Ch. 616, § 6; L. 1884, Ch. 367, § 6.

§ 12. District steam corporations.—Any corporation now or hereafter incorporated for the purpose of supplying steam to consumers from a central station or stations through pipes laid in the public streets, shall be known as a district steam corporation and upon the application in writing of the owner or occupant of any building or premises, within one hundred feet of any street main laid down by any such corporation, and payment by him of all money due from him to it, such corporation shall supply steam as may be required for heating such building or premises, notwithstanding there may be rent or compensation in arrears for steam supplied, or for meter, pipe or fittings furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if, for the space of twenty days after such application, and the deposit, if required, of a reasonable sum to cover the cost of connection and two months' steam supply, the corporation shall refuse or neglect to supply steam as required, it shall forfeit to such applicant the sum

of ten dollars and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; but no such corporation shall be required to lay a service pipe for the purpose of supplying steam to any applicant where the ground in which such pipe is required to be laid shall be frozen, or otherwise present serious obstacles to laying the same, nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay for two months' steam supply and the cost of the necessary connections and of the erection of a meter and such other special apparatus as are required for use in connection with such steam supply, nor unless the applicant shall provide the space and right of way necessary for the erection, maintenance and use of such connections and apparatus, and signify his assent in writing to the reasonable regulations of the corporation with reference to the supply of steam to consumers.

Former § 13, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 18; L. 1892, Ch. 691, § 13.

Compare L. 1885, Ch. 549, §§ 1, 2.

§ 13. Examination of meters by agent of district steam corporations.—Any such corporation may make an agreement with any of its customers, by which any of its officers or agents shall be authorized at all reasonable times to enter any dwelling, store, building, room or place, supplied with steam by such corporation and occupied by such customer, for the purpose of inspecting and examining the meters, devices, pipes, fittings and appliances for supplying or regulating the supply of steam, and for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of steam consumed. Every such agreement shall further provide that such officer or agent shall exhibit his written authority if requested by the occupant of such dwelling, store, building, room or place. Any person who shall directly or indirectly prevent or

hinder such officer or agent from entering such dwelling, store, building, room or place, or from making such inspection or examination, in violation of such agreement, shall forfeit to the corporation the sum of twenty-five dollars for each offense.

Former § 14, Business Corporations Law.

Derivation.—L. 1890, Ch. 567, § 19; L. 1892, Ch. 691, § 14.

Compare L. 1880, Ch. 263, § 4.

§ 14. **Entry by agent of district steam corporation to cut off steam.**—If any person or persons, corporation or association supplied with steam by any such corporation, shall neglect or refuse to pay the rent or remuneration for such steam, or for the meter, device, pipes, fittings or appliances, let by such corporation for supplying steam, or for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of the steam consumed, agreed upon or due for the same, as required by his, their or its contract with such corporation, the latter may thereupon stop and prevent the steam from entering the premises of such person, persons, corporation or association, so neglecting or refusing to pay such rent or remuneration, and may also in any case, in which a person is liable to pay a forfeiture, or to a fine or imprisonment, by reason of any act to or toward such corporation or its property for which such forfeiture, fine or penalty is imposed by law, stop and prevent the steam from entering the premises of the person so liable, or if such person be an officer or agent of any corporation or association, stop and prevent the steam from entering the premises of such corporation or association. In all cases in which such corporation is authorized to stop and prevent the steam from entering any premises, it may, by its officers, agents or workmen, enter into or on such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon and cut off, disconnect, separate and carry away any meter, device, pipe, fitting or other property of the corporation; and may cut off, disconnect

and separate any meter, device, pipe or fitting, whether the property of the corporation or not, from the mains or pipes of such corporation.

Former § 15, Business Corporations Law.

Derivation.— L. 1890, Ch. 567, § 20; L. 1892, Ch. 691, § 15.

Compare L. 1880, Ch. 263, § 5; L. 1883, Ch. 237.

§ 15. Water companies.— No corporation shall be formed under this chapter for the purpose of accumulating, storing, conducting, furnishing or supplying water for domestic, manufacturing or municipal purposes in the city of New York.

Any corporation formed for the purpose of supplying any other city of the state with water, if unable to agree with the owners of any real property required for the purpose of the corporation for the purchase thereof may acquire title thereto by condemnation.

Amended by L. 1909, Ch. 240, § 5, in effect April 22, 1909.

Former § 16, Business Corporations Law.

Derivation.— L. 1892, Ch. 691, § 16.

Compare L. 1880, Ch. 85; L. 1881, Ch. 472; L. 1887, Ch. 486.

Corporations formed to supply water for general use must organize under the Transportation Corporations Law, and are excluded from the provisions of the Business Corporations Law by § 2 of that law. See *ante*, page 2. A corporation intending to supply water for manufacturing, power, or other private purpose would seem to be a business corporation. See opinion of Attorney-General, April 17, 1893, *In re N. Y. & White Plains Suburban Water Co.*

§ 16. Improvement corporations; right of condemnation.— Any corporation formed for the purpose of developing or improving real property, which lays out for public use roads, streets, avenues or highways, upon or through its lands, if unable to agree with the owners of any real property required for the purpose of extending, continuing or connecting such roads, streets, avenues or highways, for the purchase thereof, may acquire title thereto by condemnation in the manner prescribed by law; provided such corporation has the consents of the

owners of not less than one-half of all of the land which adjoins or abuts upon, or which will adjoin or abut upon, such roads, streets, avenues or highways, or their extensions, continuations or connections, when completed; and such corporation may lay out and establish such roads, streets, avenues or highways, and the extensions, continuations or connections thereof, and may construct drains or sewers, and such bridges or culverts as may be necessary to maintain the grades of, or for the extension, continuation or connection of, the roads, streets, avenues or highways, so laid out; and may connect such roads, streets, avenues or highways, with or across roads, streets, avenues or highways, belonging to any other corporation or person, but may not disturb the established grades thereof. All lands so taken by condemnation shall be deemed to be acquired for a public use.

Former § 17, Business Corporations Law

Derivation.—L. 1900, Ch. 518, § 1.

ARTICLE 3

Laws Repealed; When to Take Effect

Section 25. Laws repealed.

26. When to take effect.

§ 25. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 26. **When to take effect.**—This chapter shall take effect immediately.*

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section
1868.....	161.....	All
1871.....	820.....	All
1876.....	363.....	All
1887.....	561.....	All
1890.....	567.....	All
1892.....	691.....	All
1895.....	671.....	All
1896.....	369.....	All
1896.....	460.....	All
1900.....	518.....	All
1901.....	520.....	All
1902.....	438.....	All
1902.....	457.....	All
1903.....	525.....	All
1904.....	446.....	All
1907.....	646.....	All

* Became a law February 17, 1909.

GENERAL CORPORATION LAW

Laws of 1909, Chapter 28, entitled "AN ACT relating to corporations generally, constituting Chapter Twenty-three of the Consolidated Laws."

- Article 1. Short title; classification; definitions (§§ 1-3).
2. General provisions (§§ 4-44).
3. Change of name (§§ 60-65).
4. Sale of corporate real property (§§ 70-76).
5. Judicial supervision of corporation and of the officers and members thereof (§§ 90-92).

The original General Corporation Law was Chapter 35 of the "General Laws." L. 1890, Ch. 353. It was re-enacted in L. 1892, Ch. 687.

Consolidators' Note.—"General Note. Various matters from the Code of Civil Procedure and independent statutes have been added to the General Corporation Law for the purpose of bringing together so far as possible the provisions relating generally to corporations. Most of the added matter is in the nature of actions and proceedings relating to corporations. The provisions in the Code of Civil Procedure relating to changing the name of a corporation and the sale of corporate real property have been inserted as well as the various articles of the Code of Civil Procedure relating to judicial supervision of corporations and officers and members thereof and actions of sequestration, for dissolution for annulment and proceedings for voluntary dissolution.

The provisions in the Stock Corporation Law relating to the voluntary dissolution of a stock corporation have been consolidated in this chapter as well as those relating to the dissolution of moneyed corporations which are now in the form of an independent statute.

There has been added to the law as a separate article the provisions relating to the powers, duties and liabilities of receivers of corporations.

This material was formerly scattered along the road of legislation from 1829 down to the present time. The provisions of the Revised Statutes were found in two separate chapters, one relating to receivers appointed in proceedings for the voluntary dissolution of a corporation and the other relating to trustees of insolvent debtors. These were made applicable by the repealing act of 1880, Ch. 245. From 1829 down to the adoption of the Code of Civil Procedure, and after the adoption of the Code of Civil Procedure, various independent statutes were enacted upon the subject of insolvent corporations and receivers. All the statutory provisions applicable

*Section 6. Action for sequestration, action for dissolution and action to enforce individual liability of officers and members of corporation (§§ 100-115).

7. Action to annul corporation (§§ 130-136).

8. Action to dissolve moneyed corporation (§§ 150-161).

9. Proceedings for voluntary dissolution of corporation (§§ 170-195).

10. Dissolution of stock corporation without judicial proceedings (§§ 220, 221).

10-a. †Provisions applicable to temporary and permanent receivers of corporations (§§ 226, 227).

11. Powers, duties and liabilities of receivers of corporation (§§ 230-278).

12. Provisions applicable to two or more of the foregoing proceedings or actions (§§ 300-316).

13. Alteration and repeal of charter of corporation (§§ 320, 321).

14. Laws repealed; construction; when to take effect (§§ 330-332).

ARTICLE 1

Short Title; Classification; Definitions

- Section 1. Short title.
2. Classification of corporations.
3. Definitions.

§ 1. **Short title.**—This chapter shall be known as the “General Corporation Law.”

Derivation.—L. 1890, Ch. 563, § 1; L. 1892, Ch. 687, § 1.

§ 2. **Classification of corporations.** A corporation shall be either,

1. A municipal corporation,
2. A stock corporation, or

to the powers, duties and liabilities of receivers as found in this legislation have been consolidated in one article and by a suitable reference have been made applicable to actions and proceedings as now provided by law.

The following independent acts have been disposed of: L. 1880, Ch. 537; L. 1883, Ch. 378; L. 1884, Ch. 285; L. 1898, Ch. 522; L. 1898, Ch. 534; L. 1904, Ch. 754; L. 1852, Ch. 71 has been treated in the Insurance Law. L. 1886, Ch. 271, was repealed by L. 1892, Ch. 687, and L. 1886, Ch. 310, has been repealed herein as unconstitutional pursuant to the authority of *People v. O'Brien*, 111 N. Y. 1.”

* So in original.

† Added by L. 1909, Ch. 240, §§ 32 and 40.

3. A non-stock corporation.
- A stock corporation shall be either
 1. A moneyed corporation,
 2. A railroad or other transportation corporation, or
 3. A business corporation.
- A non-stock corporation shall be either,
 1. A religious corporation,
 2. A membership corporation, or
 3. Any corporation other than a stock corporation.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

Derivation.— L. 1892, Ch. 687, § 2.

Compare L. 1890, Ch. 563, § 2.

See 52 App. Div. 135, *aff'd*, 169 N. Y. 587.

§ 3. **Definitions.**— 1. A “municipal corporation” includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

2. A “stock corporation” is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term “non-stock corporation” includes every corporation other than a stock corporation.

4. A “moneyed corporation” is a corporation formed under or subject to the banking or the insurance law.

5. A “domestic corporation” is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by

the code of civil procedure for the purpose of construing such code.

6. The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term "certificate of incorporation" shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.*

9. The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein.

10. The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

Derivation.—L. 1890, Ch. 563, § 2; L. 1892, Ch. 687, § 3; L. 1895, Ch. 672, § 1.

* See note under § 23, General Corporation Law, *post*, as to the right to deprive stockholders of the power to vote.

ARTICLE 2

General Provisions

- Section 4. Qualifications of incorporators.
5. Filing and recording certificates of incorporation.
6. Corporate names.
7. Amended and supplemental certificates.
8. Lost or destroyed certificates.
9. Certificate and other papers as evidence; evidence of consolidation.
10. Limitation of powers; provisions of certificate.
11. Grant of general powers.
12. Enlargement of limitations upon the amount of the property of non-stock corporations.
13. Acquisition of additional real property.
14. Acquisition of property without the state.
15. Certificate of authority of a foreign corporation.
16. Proof to be filed before granting certificate.
17. Reincorporation of foreign moneyed corporations.
18. Papers to be filed upon reincorporation.
19. When reincorporation effective and effect thereof.
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43. As to acts of directors.

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§ 4. **Qualifications of incorporators.**—A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and one of them a resident of this state. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

Derivation.—L. 1892, Ch. 687, § 4; L. 1895, Ch. 672, § 1.

Compare L. 1875, Ch. 611, § 3; L. 1890, Ch. 567, § 2.

§ 5. **Filing and recording certificates of incorporation.**

—1. Every certificate of incorporation including the corporate name or title and every amended or supplemental certificate, and every certificate which alters the provisions of any certificate of incorporation or any amended or supplemental certificate hereafter executed, shall be in the English language, and except as otherwise provided by law, shall be filed in the office of the secretary of state, and shall be by him duly recorded and indexed in books specially provided therefor, and a certified copy of such certificate or amended or supplemental certificate with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct. All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid.

2. Whenever under any law now or heretofore in force the certificate of incorporation of any corporation other than a stock corporation was or is required to be filed in more than one public office, a certified copy of such certificate so filed in any one of such public offices may be filed in such other office with the like effect as if the original had been duly filed therein, provided, however, that no rights accrued prior to the filing of such copy shall be impaired or affected thereby, provided also, that such filing of a copy shall not cause a duplication or similarity of corporate names in violation of the next succeeding section.

Derivation.—L. 1892, Ch. 687, § 5; L. 1895, Ch. 672, § 1; L. 1902, Ch. 285, § 1; L. 1906, Ch. 531, § 1.

Compare L. 1848, Ch. 40, §§ 1, 2; L. 1875, Ch. 611, § 4; L. 1881, Ch. 22, § 1; L. 1890, Ch. 563, § 3.

Mandamus will lie to compel the secretary of state to file a proper certificate. See 128 N. Y. 591; 138 N. Y. 614.

§ 6. Corporate names.—1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state; nor shall any corporation except a religious, charitable or benevolent corporation be authorized to do business in this state unless its name has such word or words, abbreviation, affix or prefix, therein or thereto, as will clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership; or unless such corporation uses with its corporate name, in this state, such an affix or prefix. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property of franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be here-

after organized under the laws of this state, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "title," "savings," "investment," "loan" or "benefit" as part of its name, except a corporation formed under the banking law or the insurance law.

2. No corporation, society or association, whether now existing or hereafter organized under or by virtue of the laws of this state, shall ever employ the words "Lucretia Mott" to designate, describe or name any hospital, infirmary or dispensary, or any part thereof, or any similar institution.

Amended by L. 1911, Ch. 638, taking effect January 1, 1912.

Derivation.— L. 1902, Ch. 9; L. 1907, Ch. 115, § 1.

Compare L. 1875, Ch. 611, § 4; L. 1890, Ch. 563, § 4; L. 1892, Ch. 687, § 6; L. 1895, Ch. 672, § 1; L. 1900, Ch. 704, § 1.

§ 7. Amended and supplemental certificates.— If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the corporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and

record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

Derivation.—L. 1890, Ch. 563, § 5; L. 1892, Ch. 687, § 7.

Compare L. 1870, Ch. 135 §§ 1, 2; L. 1881, Ch. 468, § 11.

For form of Amended Certificate, see Form No. 4.

§ 8. Lost or destroyed certificates.—If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

Derivation.—L. 1890, Ch. 563, § 6; L. 1892, Ch. 687, § 8.

Compare L. 1888, Ch. 306, §§ 1, 2.

§ 9. Certificate and other papers as evidence; evidence of consolidation.—1. The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation, or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts.*

2. Whenever, by the laws of any other state or territory, or the dominion of Canada, a copy of the certificate of organization or incorporation or any other certificate, certified or exemplified by any officer or officers in such

* **Derivation.**—L. 1890, Ch. 563, § 7; L. 1892, Ch. 687, § 9; L. 1895, Ch. 672, § 1.

Compare L. 1811, Ch. 67, § 8; L. 1847, Ch. 210, § 3; L. 1848, Ch. 37, § 9; L. 1848, Ch. 40, § 9; L. 1848, Ch. 259, § 4; L. 1848, Ch. 265, last three lines of § 3; L. 1850, Ch. 140, § 3; L. 1853, Ch. 117, § 9; L. 1853, Ch. 135, § 11; L. 1854, Ch. 112, last clause of § 3; L. 1854, Ch. 232, § 9; L. 1857, Ch. 546, § 9; L. 1861, Ch. 149, § 4; L. 1867, Ch. 974, § 3; L. 1869, Ch. 917, last five lines § 2; L. 1872, Ch. 820, § 16; L. 1873, Ch. 469, § 5; L. 1874, Ch. 143, § 9; L. 1875, Ch. 611, last clause § 7; L. 1878, Ch. 203, § 3; L. 1885, Ch. 505, § 4; L. 1888, Ch. 462, § 20.

state or territory or dominion, is or shall be prima facie evidence of the due formation, creation, existence, organization or capacity of any corporation or joint-stock company, created, organized or located in such state, territory or dominion, or claiming so to be, such certificate or certificates, duly exemplified, or a duly exemplified copy thereof, shall be received in all actions and proceedings in this state, in or before all courts and officers, with the same force and effect in all respects as prima facie evidence as aforesaid, as in such other state, territory or dominion.*

3. Where two or more corporations have been or shall hereafter be consolidated and merged into a new corporation, a certificate of the secretary of state under his official seal concisely stating the names of the respective corporations consolidated, the dates of the filing of the certificates respectively of the incorporation of such corporations in his office, the object for which they were formed, including the nature and locality of their business as set forth in their respective incorporation papers on file in his office, the date of the filing of the consolidation agreement and other proceedings in his office, the name of the new corporation formed by such consolidation and merger, the term of its corporate existence, the place where its principal office is situated and the amount of its capital stock, shall be presumptive and prima facie evidence in all actions and special proceedings for all purposes of the incorporation of the corporations so consolidated, the incorporation of the new corporation by such consolidation and merger from the date of filing of said consolidation agreement and proceedings, and of the other facts so certified by him.†

§ 10. Limitation of powers; provisions of certificate.—

1. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given.

2. The certificate of incorporation of any corporation may contain any provision for the regulation of the busi-

* Derivation.—L. 1877, Ch. 311, § 1.

† Derivation.—L. 1899, Ch. 201, § 1.

ness and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

Derivation.—L. 1890, Ch. 563, § 9; L. 1892, Ch. 687, § 10; L. 1895, Ch. 672, § 1.

See 194 N. Y. 19, aff'g 126 App. Div. 657; 71 Misc. 510.

§ 11. Grant of general powers.—Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal,* and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be

* § 45. **Seal, private as corporate seal.**—An instrument or writing duly executed, in the corporate name of a corporation which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal. General Construction Law, § 45 (L. 1909, Ch. 27, § 45), formerly The Statutory Construction Law, § 13, part. For definition of "private seal," see General Construction Law, § 44.

valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

Derivation.—L. 1890, Ch. 563, § 8; L. 1892, Ch. 687, § 11; L. 1895, Ch. 672, § 1.

Compare L. 1811, Ch. 67, § 6; L. 1848, Ch. 37, §§ 7, 23; L. 1848, Ch. 40, §§ 7, 26; L. 1848, Ch. 265, § 4; L. 1848, Ch. 319, § 9; L. 1853, Ch. 117, §§ 7, 26; L. 1854, Ch. 232, §§ 7, 26; L. 1854, Ch. 269, §§ 4, 6; L. 1857, Ch. 546, §§ 2, 7; L. 1857, Ch. 776, §§ 6, 8; L. 1859, Ch. 168, § 13; L. 1862, Ch. 438, § 3; L. 1867, Ch. 960, § 4; L. 1867, Ch. 971, § 9; L. 1872, Ch. 248, § 11; L. 1872, Ch. 820, § 18; L. 1873, Ch. 397, § 8; L. 1873, Ch. 616, § 4; L. 1874, Ch. 143, §§ 7, 15; L. 1874, Ch. 288, §§ 2, 3; L. 1875, Ch. 267, §§ 5, 10; L. 1875, Ch. 343, § 8; L. 1875, Ch. 611, § 2; L. 1877, Ch. 228, § 6; L. 1881, Ch. 468, last paragraph of § 4; L. 1882, Ch. 273, § 3; L. 1884, Ch. 367, § 4; L. 1886, Ch. 236, § 8; L. 1888, Ch. 293, § 7; L. 1888, Ch. 391, § 5.

1. The corporate existence may be extended. See § 37, *post*.

2. A corporate seal is not necessary to bind the corporation. See 94 N. Y. 145; 110 N. Y. 50.

3. The law places no limit upon the amount of property that may be held by a business corporation.

4. See § 30, Stock Corporation Law, *ante*.

5. The by-laws of the members are here distinguished from the by-laws of the directors. The former control the latter. See 127 App. Div. 41; 71 Misc. 512.

For form of By-laws, see Form No. 5.

§ 12. Enlargement of limitations upon the amount of the property of non-stock corporations.—If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of ten million dollars or less, or the yearly income derived from which shall be one million dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

Amended by L. 1909, Ch. 276; L. 1911, Ch. 581, taking effect June 30, 1911.

Derivation.—L. 1890, Ch. 497, § 1; L. 1892, Ch. 687, § 12; L. 1894, Ch. 400, § 1.

§ 13. **Acquisition of additional real property.**— When any corporation, except a life insurance corporation, shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

Derivation.— L. 1882, Ch. 290, § 1; L. 1890, Ch. 563, § 10; L. 1892, Ch. 687, § 13; L. 1906, Ch. 228, § 1.

§ 14. **Acquisition of property without the state.**— Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, philanthropic or educational institution within this state may also carry on its work and establish or maintain one or more branches of such institution or an additional institution or additional institutions in any other state, the District of Columbia or in any part of the territories or dependencies of the United States of America or in any foreign country and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey or otherwise dispose of such real and personal property without this state as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

Derivation.— L. 1890, Ch. 563, § 11; L. 1892, Ch. 687, § 14; L. 1903, Ch. 178, § 1.

Compare L. 1872, Ch. 146, § 1; L. 1875, Ch. 119; L. 1883, Ch. 361, § 1.

The laws and decisions of the state or country where the real property is situated should be consulted upon this question.

140 N. Y. 576; 14 Peters, 122; 83 Fed. Rep. 880; 91 id. 299; 96 id. 454; 172 U. S. 239; 153 U. S. 523; 132 U. S. 282; 134 U. S. 316; 2 R'y & Corp. L. J. 470.

The policy to exclude a foreign corporation from a state, or to prohibit its holding land therein, must be expressed in some affirmative way. 100 U. S. 55; 101 U. S. 352.

§ 15. Certificate of authority of a foreign corporation.

—No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name.

Former § 15, General Corporation Law, altered.

- **Derivation.**—L. 1892, Ch. 687, § 15; L. 1901, Ch. 96, § 1; L. 1901, Ch. 538, § 1; L. 1904, Ch. 490, § 1.

This section avoids the effect of those decisions which enabled foreign stock corporations to sue in the courts of this state on a

contract made here, provided the certificate was filed at any time before suit, though subsequent to the making of the contract, and also those decisions which permitted resident assignees of such claims to sue thereon.

See 183 N. Y. 98; 182 N. Y. 553, aff'g 98 App. Div. 88; 180 N. Y. 533, aff'g 96 App. Div. 52; 155 N. Y. 373; 58 App. Div. 224.

See §§ 1778, 1779, 1780, Code of Civil Procedure.

§ 16. Proof to be filed before granting certificate.— Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, and the signature of its president, vice-president or other acting head, particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state and such designation must specify such office or place of business of the said person so designated, and if it is within a city the street and street number if any, or other suitable designation of the particular locality. Such designation shall be accompanied with the written consent of the person designated and shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state or until the filing in the same office of a written revocation of said consent executed by the person so designated. If the person so designated dies or removes from the place where the corporation has its principal place of business within the state, or files such revocation of his consent, and the corporation does not within thirty days after such death or removal or revocation of consent designate in like manner another person upon whom process against it may be served within the state, the secretary of state

may revoke the authority of the corporation to do business within the state, and process against the corporation in an action upon any liability incurred within this state before such revocation, may, after such death or removal, or revocation of consent, and before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him. The secretary of state may require the execution of any such designation, revocation or consent, to be authenticated as he deems proper and he may refuse to file it without such authentication.

Former § 16 as altered, together with part of § 432, subd. 2, Code of Civil Procedure incorporated. For remainder of last-named section, see Code of Civil Procedure, § 432.

See § 931-a, Code of Civil Procedure.

Derivation.—L. 1892, Ch. 687, § 16; L. 1895, Ch. 672, § 1.

See 146 N. Y. 281; 136 N. Y. 343; 55 App. Div. 20.

Even though no designation be made, as provided in the above section, personal service of a summons may be made upon a foreign corporation by delivering a copy to any of the officers specified in § 432, subd. 1, Code of Civil Procedure. The officer so served may merely be temporarily sojourning in the State of New York, and not engaged on official business, and this is true even though the corporation have no property or transact no business in the state. See also subdivisions 3 and 4, *idem*. See 189 N. Y. 241; 87 N. Y. 137; 87 N. Y. 355.

For form of above Proof, etc., see Form No. 6.

§ 17. Reincorporation of foreign moneyed corporations.

—Any moneyed corporation duly organized by or under the laws of any state of the United States, and having an office or doing business in this state, may file, if a banking corporation or authorized to make loans upon pledges or deposits, in the office of the superintendent of banks, and if an insurance corporation in the office of the superintendent of insurance, the documents described in section eighteen of this chapter, and such documents shall be recorded as original certificates of incorporation are re-

quired by law to be recorded. The fees for filing and recording such documents, together with the tax, if any, required by law to be paid before the incorporation of a domestic company of the same class, must be paid before filing.

Derivation.—L. 1900, Ch. 733, § 1.

§ 18. Papers to be filed upon reincorporation.—The documents to be filed by any such corporation shall include,

1. A copy of its charter, certificate of incorporation, or other document constituting it a body corporate, with such amendments, if any, as are desired by the corporation or are required by the laws of New York, authenticated as an original certificate of incorporation is required to be authenticated;

2. A declaration of its desire to become a corporation of this state and of its submission to the laws of this state, duly executed by the authority of the body in which its corporate powers are vested.

3. A certificate of the superintendent of that department in which these papers are filed that the charter, certificate of incorporation or other constituent document, with its proposed amendments, if any, as filed, is in all respects consistent with the laws of this state relating to domestic corporations of the same class; that the corporation applicant has complied with all conditions imposed by its laws upon domestic corporations of the same class beginning business in this state, with the exception of any provisions concerning the residence of a majority of the corporators, trustees, or directors of such corporation; that its name is not the same with the name of any domestic corporation, nor likely to be confounded with any such name, and that it has paid all fees and taxes due from it to the state, including the tax, if any, imposed by this state upon the original incorporation of a company of the same class.

Derivation.—L. 1900, Ch. 733, § 2.

§ 19. When reincorporation effected and effect thereof.

—From the date of filing these documents the corporation shall become and be a corporation of this state, and shall be subject to all the laws of this state applicable to corporations of the same class; but its existence and powers as such corporation shall terminate if it shall fail at any time for one month to maintain an office within the state at which an authorized officer or agent shall be present at all reasonable business hours, prepared to exhibit the books of the company to the proper authorities of this state and to receive service of process; or if it shall fail within two years to terminate its corporate existence derived from any other state, by surrender of its charter or by dissolution.

Derivation.—L. 1900, Ch. 733, § 3.

§ 20. Acquisition of real property in this state by certain foreign corporations.—Any foreign corporation doing business in this state and created under the laws of the United States, or of any state or territory thereof, or of any foreign state or nation which borders the United States of America and which by its laws confers similar privileges on corporations created by the laws of the state of New York, may acquire and hold such real property in this state as may be necessary for its corporate purposes in the transaction of its business in this state, and convey the same by deed or otherwise in the same manner as a domestic corporation.

Amended by L. 1910, Ch. 68.

Former § 17, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 12; L. 1892, Ch. 687, § 17.

Compare L. 1887, Ch. 450, § 1.

See 136 N. Y. 347; 128 N. Y. 205.

§ 21. Acquisition by foreign corporation of real property in this state.—Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this state and hold the same for not exceeding five years from the date

of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

Former § 18, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 13; L. 1892, Ch. 687, § 18; L. 1894, Ch. 136, § 1.

Compare L. 1877, Ch. 158, § 1.

§ 22. Prohibition of banking powers.—No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United States, except as permitted by such laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying and selling bills of exchange or of issuing bills, notes or other evidences of debt for circulation as money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph company, or a corporation incorporated prior to the year eighteen hundred and fifty, to promote the welfare of emigrants, possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check money order or otherwise.

Amended by L. 1911, Ch. 771, taking effect July 24, 1911.

Former § 19, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 14; L. 1892, Ch. 687, § 19; L. 1904, Ch. 236, § 1.

§ 23. Qualification of members as voters.—Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books

of the corporation may be made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock, a proxy to vote thereon. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

Part of former § 20, General Corporation Law.

Derivation.—L. 1890, Ch. 564, § 54; L. 1892, Ch. 687, § 20; L. 1901, Ch. 355, § 1, part.

Compare L. 1853, Ch. 135, § 8; L. 1880, Ch. 510, § 2.

See 148 N. Y. 519; 138 N. Y. 557; 133 App. Div. 756; 41 App. Div. 57; 69 Misc. 276.

The right to deprive stock of voting power.—There is nothing in the statute to prevent the inclusion in a certificate of incorporation of a provision limiting the voting rights of the holders of preferred stock and excluding them from voting for directors. The Secretary of State is not justified in refusing to file such a certificate, and mandamus will lie to compel him to accept it. *People ex rel. Browne v. Koenig*, 133 App. Div. 756.

§ 24. Cumulative voting.—The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions

of laws existing on April thirtieth, eighteen hundred and ninety-one, were entitled to the exercise of such right, may hereafter exercise such right according to the provision of this section.

Part of former § 20, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 20; L. 1901, Ch. 355, § 1, part. Compare L. 1875, Ch. 611, § 26.

See note to § 23, General Corporation Law.

§ 25. Voting trust agreements.—A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request therefor, may, by a like agreement in writing, also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and canceled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours.

Part of former § 20, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 20; L. 1901, Ch. 355, § 1, part. While cases are not lacking as to the validity and direct effect of voting trust agreements, there seems to be no other case directly in point upon the question considered in *O'Grady v. United States Independent Telephone Co.*, 71 Atl. 1040, 21 L. R. A. (N. S.) 732, as to the status of the holder of voting trust certificates as a stockholder for purposes other than voting the stock. In this case it was held that the holder of such a certificate is the beneficial owner of the stock represented by it in the hands of the voting trustees, and that being such beneficial owner, he is a stockholder and therefore entitled to institute the proceedings provided for the winding up of an insolvent corporation. See also *Thompson v. Stanley*, 20 N. Y. Supp. 317.

For form of Voting Trust Agreement, see Form No. 7.

§ 26. **Proxies.**—Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

Former § 21, General Corporation Law.

Derivation.—L. 1890, Ch. 564, § 54; L. 1892, Ch. 687, § 21.

For form of Proxy, see Form No. 8.

§ 27. **Challenges.**—Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meet-

ing, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

Former § 22, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 22; L. 1895, Ch. 672, § 1; L. 1901, Ch. 355, § 1.

Compare L. 1890, Ch. 564, § 54.

§ 28. Effect of failure to elect directors.—If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

Former § 23, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 23.

Compare L. 1796, Ch. 43, ¶ 11; L. 1811, Ch. 67, § 4; L. 1848, Ch. 37, § 4; L. 1848, Ch. 40, § 4; L. 1848, Ch. 319, § 4; L. 1853, Ch. 117, § 4; L. 1853, Ch. 135, § 5; L. 1854, Ch. 232, §§ 4, 5; L. 1857, Ch. 546, § 4; L. 1872, Ch. 820, § 12; L. 1873, Ch. 397, § 4; L. 1874, Ch. 143, § 4; L. 1875, Ch. 267, § 5; L. 1875, Ch. 611, § 27; L. 1886, Ch. 236, § 6; L. 1887, Ch. 317, § 6; L. 1887, Ch. 501, § 3; L. 1888, Ch. 293, § 4; L. 1890, Ch. 563, § 18.

§ 29. Mode of calling special election of directors.—If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.*

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks im-

* See § 25, Stock Corporation Law, *post*.

mediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

Former § 24, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 24.

Compare L. 1885, Ch. 489, §§ 3, 4; L. 1890, Ch. 564, §§ 53, 54.

§ 30. Mode of conducting special election of directors.

—Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

Former § 25, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 25.

Compare L. 1890, Ch. 564, § 53.

§ 31. Qualifications of voters and canvass of votes at special elections.—In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him,

the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

Former § 26, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 26.

Compare L. 1890, Ch. 564.

See 31 N. Y. 550.

§ 32. Powers of supreme court respecting elections.—

The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation, or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs and allegations of the parties, or otherwise, inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

Former § 27, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 27.

Compare L. 1890, Ch. 563, § 15.

See 186 N. Y. 216; 138 N. Y. 557; 134 App. Div. 442; 115 App. Div. 821; 105 App. Div. 629; 61 Hun, 338.

For form of above Petition, see Form No. 9.

§ 33. Stay of proceedings in actions collusively brought.—If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any

director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

Former § 28, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 16; L. 1892, Ch. 687, § 28.

Compare L. 1885, Ch. 489.

§ 34. Quorum of directors and powers of majority.—

The affairs of every corporation shall be managed by its board of directors, at least one of whom shall be a resident of this state. Unless otherwise provided a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of the corporation.

Former § 29, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 17; L. 1892, Ch. 687, § 29; L. 1901, Ch. 214, § 1; L. 1904, Ch. 737, § 1.

§ 35. Directors as trustees in case of dissolution.—

Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the

trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

Former § 30, General Corporation Law.

Derivation.— L. 1890, Ch. 563, §§ 19, 20; L. 1892, Ch. 687, § 30.
See § 240, General Corporation Law.

§ 36. Forfeiture for non-user.— If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

Former § 31, General Corporation Law.

Derivation.— L. 1890, Ch. 563, § 21; L. 1892, Ch. 687, § 31.

§ 37. Extension of corporate existence.— Any domestic corporation at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and

acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and shall be filed in the office of the secretary of state, and shall by him be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate.

The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

Part of former § 32, General Corporation Law.

Derivation.—L. 1890, Ch. 563, § 22; L. 1892, Ch. 687, § 32; L. 1900, Ch. 177, § 1; L. 1901, Ch. 355, § 1; L. 1905, Ch. 256, § 1, part.

Compare L. 1857, Ch. 29, § 2; L. 1866, Ch. 697, § 5; L. 1867, Ch. 12; L. 1867, Ch. 937; L. 1874, Ch. 240; L. 1875, Ch. 58, § 1; L. 1875, Ch. 611, § 29.

For form of Consent and Certificate of Consent or Vote to Extend Corporate Existence, see Form No. 10.

§ 38. Revival of corporate existence.—If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall

be unmatured and unpaid, or, if a bank, incorporated under a general law of this state, that shall have issued any other obligations or shall have incurred any other indebtedness which at the date of the application shall be unsatisfied or unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation are authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

Amended by L. 1911, Ch. 63, taking effect April 5, 1911.

Part of former § 32, General Corporation Law.

Derivation.— L. 1892, Ch. 687, § 32; L. 1900, Ch. 177, § 1; L. 1901, Ch. 355, § 1; L. 1905, Ch. 256, § 1, part.

§ 39. Approval of certificates of extension or revival; when required.— In the case of a corporation formed under or subject to the banking law, no certificate of extension or revival shall be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in

which such turnpike or bridge is located, approving of and authorizing such extension.

Part of former § 32, General Corporation Law.

Derivation.— L. 1892, Ch. 687, § 32; L. 1900, Ch. 177, § 1; L. 1901, Ch. 355, § 1; L. 1905, Ch. 256, § 1, part.

§ 40. Extension when stock is owned by another corporation.— If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turnpike, plank-road or bridge corporation shall be lawfully owned by another stock corporation entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock.

Part of former § 32, General Corporation Law.

Derivation.— L. 1892, Ch. 687, § 32; L. 1900, Ch. 177, § 1; L. 1901, Ch. 355, § 1; L. 1905, Ch. 256, § 1 part.

§ 41. Effect of extension.— Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law.

Part of former § 32, General Corporation Law.

Derivation.— L. 1892, Ch. 687, § 32; L. 1900, Ch. 177, § 1; L. 1901, Ch. 355, § 1; L. 1905, Ch. 256, § 1, part.

§ 42. When notice or lapse of time unnecessary.—Whenever under the provisions of any of the corporate laws a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation, or by his attorney thereunto authorized.

Former § 38, General Corporation Law.

Derivation.—L. 1895, Ch. 672, § 2.

For forms of Waiver of Notice, see Forms Nos. 11 and 12.

§ 43. As to acts of directors.—Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action by the agreement or action of its directors, managers or trustees, such agreement or action may be taken by such directors, regularly convened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers or trustees. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Except when otherwise required by law or the by-laws of the corporation, special meetings of the members of the corporation may be called in the same manner as the annual meeting thereof.

Former § 39, General Corporation Law.

Derivation.—L. 1895, Ch. 672, § 2; L. 1901, Ch. 355, § 1.

§ 44. Political contributions prohibited; penalty.—No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or

indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and punishable by imprisonment in a penitentiary or county jail for not more than one year and a fine of not more than one thousand dollars. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Former § 41, General Corporation Law.

Derivation.—L. 1906, Ch. 239, § 1.

ARTICLE 3

Change of Name

Section 60. Petition by corporation to change name.

61. Contents of petition.

62. Notice of presentation of petition.

63. Order authorizing change.

64. When change to take effect.

65. Substitution of new name in pending action or proceeding.

§ 60. Petition by corporation to change name. A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved, if a banking corporation, by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the public service commission. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

Amended by L. 1910, Ch. 296.

From Code of Civil Procedure, § 2411.

Consolidators' Note. "Code of Civil Procedure, §§ 2411 to 2416 have been consolidated in this article so far as they relate to the change of name of a corporation. The portions of these sections relating to the change of the name of an individual have been left in the Code of Civil Procedure. The last sentence has been omitted from § 63, because consolidated in County Law, § 161, subd. 6."

§ 61. **Contents of petition.** The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or desposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

From Code of Civil Procedure, § 2412. For remainder of that section, see § 2412, Code of Civil Procedure.

For forms of Resolution and Petition to Change Name, see Forms Nos. 13 and 14.

§ 62. **Notice of presentation of petition.**— If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for three successive weeks in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the public service commission. In the city and county of New York such notice shall be published once in each week for three successive weeks in two daily newspapers published in such county. If the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law the court may dispense with the publication of the notice of the presentation of such petition or require notice of such presentation to be given to such persons and in such manner as the court thinks proper. A copy of the petition and notice of motion shall be filed with the secretary of state, and the

proposed name shall thereupon be reserved for said corporation until three weeks after the date of such motion, and until three weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the secretary of state, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the state of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this state.

Amended by L. 1910, Ch. 296.

From Code of Civil Procedure, § 2413. For remainder of that section, see § 2413, Code of Civil Procedure.

For form of above Notice, see Form No. 15.

§ 63. **Order authorizing change.** If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed and that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted to be filed within ten days thereafter in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed, in which its principal office shall be located, or if it has no business office in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office

of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the offices of the public service commissions. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof, in a designated newspaper, in the county in which the order is directed to be entered, once in each week for four successive weeks. The court may dispense with the publication of a copy of such order and require notice to be given to such persons and in such manner as it thinks proper if the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law.

Amended by L. 1910, Ch. 296.

From Code of Civil Procedure, § 2414. For remainder of that section, see Code of Civil Procedure, § 2414, and County Law, § 161, subd. 6.

See Consolidators' Note under § 60, *ante*.

For form of above Order, see Form No. 16.

§ 64. When change to take effect.—If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings had prior to April fourth, eighteen hundred and ninety-four, under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

From Code of Civil Procedure, § 2415.

§ 65. Substitution of new name in pending action or proceeding.—An action or special proceeding, civil or criminal, commenced by or against a corporation whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding.

From Code of Civil Procedure, § 2416.

ARTICLE 4

Sale of Corporate Real Property

Section 70. Application of this article.

71. Petition.

72. Hearing on application.

73. Order to sell, mortgage or lease.

74. Insolvent corporation.

75. Service of notices.

76. Practice in cases not herein provided for.

§ 70. Application of this article.—Whenever any corporation is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of this article.

From Code of Civil Procedure, § 3390. For remainder of that section, see Joint-Stock Association Law, § 8.

§ 71. Petition.—The proceeding shall be instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation applicant, of a petition setting forth the following facts:

1. The name of the corporation and of its directors, trustees or managers, and of its principal officers, and their places of residence.

2. The business of the corporation or the object or purpose of its incorporation and a reference to the statute under which it was incorporated.

3. A description of the real property to be sold, mortgaged or leased, by metes and bounds, with reasonable certainty.

Consolidators' Note.—“Code of Civil Procedure, §§ 3390–3396, so far as they relate to proceedings for the sale of the real property of a corporation, have been consolidated in this article, and the portion relating to the sale of the real property of a joint-stock association has been consolidated in Joint-Stock Association Law, § 9.”

4. That the interests of the corporation will be promoted by the sale, mortgage or lease, of the real property specified, and a concise statement of the reasons therefor.

5. That such sale, mortgage or lease has been authorized, by a vote of at least two-thirds of the directors, trustees or managers of the corporation at a meeting thereof, duly called and held, and a copy of the resolution granting such authority.

6. The market value of the remaining real property of the corporation and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all.

7. The application proposed to be made of the moneys realized from such sale, mortgage or lease.

8. Where the consent of the shareholders, stockholders or members of the corporation is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent, or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition.

9. A demand for leave to mortgage, lease or sell the real estate described.

The petition shall be verified in the same manner as a verified pleading in an action in a court of record.

From Code of Civil Procedure, § 3391.

§ 72. Hearing on application.— Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer or creditor of the corporation or otherwise, in which case the application shall be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court, with his opinion thereon. Any person, whose interests may be affected by the proceeding, may appear

upon the hearing and show cause why the application should not be granted.

Code of Civil Procedure, §§ 3392, 3393, part. For remainder of § 3393, see § 73 following.

§ 73. Order to sell, mortgage or lease.—Upon the hearing of the application, if it shall appear, to the satisfaction of the court, that the interests of the corporation will be promoted thereby, an order may be granted authorizing it to sell, mortgage or lease the real property described in the petition, or any part thereof, for such sum, and upon such terms as the court may prescribe, and directing what disposition shall be made of the proceeds of such sale, mortgage or lease.

From Code of Civil Procedure, § 3393, part. For remainder of § 3393, see § 72 *ante*.

§ 74. Insolvent corporation.—If the corporation is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard.

From Code of Civil Procedure, § 3394.

§ 75. Service of notices.—Service of notices, provided for in this article, may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mailing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.

From Code of Civil Procedure, § 3395.

§ 76. Practice in cases not herein provided for.—In all applications made under this article, where the mode or manner of conducting any or all of the proceedings thereon is not expressly provided for, the court before

whom such application may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this article, or of any act authorizing the sale of corporate real property, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

From Code of Civil Procedure, § 3396.

ARTICLE 5

Judicial Supervision of Corporation and of the Officers
and Members Thereof

Section 90. Action against officers of corporation for misconduct.

91. Who may bring an action.

92. Visitation power over corporation not affected by this article.

§ 90. Action against officers of corporation for misconduct.—An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, including any neglect of or failure to perform their duties, in the management and disposition of the funds and property, committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by or through any neglect of or failure to perform or by other violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the re-

Consolidators' Note.—“This article is made up of the provisions of Ch. 15, Tit. 2, Art. 2 of the Code of Civil Procedure, entitled ‘Judicial supervision of a corporation and of the officers and members thereof.’ It has been incorporated in the General Corporation Law as a separate article without change.”

moval to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.

7. The court must, upon the application of either party, make an order directing the trial by a jury of the issue of neglect or failure of defendants to perform their duties; and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

As to any litigation pending prior to September one, nineteen hundred and seven, the provisions of this section as they existed prior to that date shall apply.

From Code of Civil Procedure, § 1781. The last paragraph is from L. 1907, Ch. 157, § 2. See 196 N. Y. 102; 133 App. Div. 122.

§ 91. Who may bring such an action.—An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state, or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

From Code of Civil Procedure, § 1782. See 196 N. Y. 102; 133 App. Div. 122.

§ 92. Visitation power over corporation not affected by this article.—This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

From Code of Civil Procedure, § 1783.

ARTICLE 6

**Action for Sequestration, Action for Dissolution and
Action to Enforce Individual Liability of Officer and
Member of Corporation**

- Section 100. Action by judgment creditor for sequestration.
101. Action to dissolve a corporation.
102. Who may bring action to dissolve a corporation.
103. Temporary injunction in action authorized by this article.
104. Temporary receiver.
105. Additional powers and duties of temporary receiver.
106. Permanent receiver.
107. Additional duties and liabilities of permanent receiver.
108. Application for appointment of receiver.
109. Officers and stockholders may be made parties in action brought by creditor.
110. Separate action may be brought against officers and stockholders.
111. Proceedings in such actions.
112. Distribution of property of corporation by judgment in actions under this article.
113. Recovery of stock subscriptions.
114. Liability of directors and stockholders.
115. Effect of this article.

§ 100. Action by judgment creditor for sequestration.
—Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the state, and an execution issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section one hundred and twelve of this chapter.

From § 1784, Code of Civil Procedure.

Consolidators' Note.—“This article consists of Ch. 15, Tit. 2, Art. 3 of the Code of Civil Procedure, entitled ‘Actions to procure the dissolution of a corporation and actions to enforce the individual liability of the officers or members of a corporation with or without a dissolution thereof.’ It has been inserted in the General Corporation Law without change. One or two provisions have been inserted in this article from other statutes” * * *.

§ 101. Action to dissolve a corporation.—In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of the state, and forfeiting its corporate rights, privileges and franchises, may be maintained, as prescribed in the next section :

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it.

From § 1785, Code of Civil Procedure.

§ 102. Who may bring action to dissolve a corporation.—An action specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly.

From § 1786, Code of Civil Procedure.

§ 103. Temporary injunction in action authorized by this article.—In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, re-

straining the corporation, and its trustees, directors, managers and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering, to any person, any money, property, or effects of the corporation,* during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of the code of civil procedure, relating to the granting, vacating or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.

From § 1787, Code of Civil Procedure.

§ 104. Temporary receiver.—In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell or otherwise dispose of the property as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof.

From § 1788, part, Code of Civil Procedure. For remainder of that section, see § 106 following.

§ 105. **Additional powers and duties of temporary receiver.**—A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.

From § 1789, Code of Civil Procedure.

§ 106. **Permanent receiver.**—A receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver in article eleven of this chapter.

Amended by L. 1909, Ch. 240, § 33.

From § 1788, part, Code of Civil Procedure. For remainder of that section, see § 104 above.

§ 107. **Additional duties and liabilities of permanent receiver.**—A permanent receiver shall keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year make and file a written statement, verified by his oath that such statement is correct and true, showing the amount of money received by such receiver, his agents or attorneys, the amount he has a right to retain and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver,

shall at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him, the supreme court, at either an appellate division or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor as if no removal had been made. Such receiver shall also be liable to pay to the party interested, interest at the rate of ten per centum per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 2, § 42, as amended by L. 1858, Ch. 348, § 1.

§ 108. Application for appointment of receiver.—Applications made by the attorney-general for the appointment of a receiver of a corporation shall be made in the judicial district in which the action in which the appointment is sought is triable.

Derivation.—L. 1883, Ch. 378, § 1, part; L. 1896, Ch. 282, § 1.
See § 314, *post*.

§ 109. Officers and stockholders may be made parties in action brought by creditor.—Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

From § 1790, Code of Civil Procedure.

§ 110. Separate action may be brought against officers and stockholders.—Where the stockholders, directors,

trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning and enforcing their liability.

From § 1791, Code of Civil Procedure.

§ 111. Proceedings in such actions.—In an action brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendant's liability must be apportioned accordingly; but, if it affirmatively appears, that the corporation is insolvent, and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.

From § 1792, Code of Civil Procedure.

§ 112. Distribution of property of corporation by judgment in actions under this article.—A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees, or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation.

From § 1793, Code of Civil Procedure.

§ 113. Recovery of stock subscriptions.—Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the

shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.

From § 1794, Code of Civil Procedure.

§ 114. **Liability of directors and stockholders.**—If it appears, that the property of the corporation, and the sums collected or * collectable from the stockholders, upon their stock subscriptions, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the directors, trustees, or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.

From § 1795, Code of Civil Procedure.

§ 115. **Effect of this article.**—This article does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.

From § 1796, Code of Civil Procedure.

* So in original.

ARTICLE 7

Action to Annul a Corporation

- Section 130. Action by attorney-general to annul corporation when legislature directs.
131. Action by attorney-general to annul corporation by leave of court.
132. Notice of application for leave to commence action to annul corporation.
133. Jury trial.
134. Injunction and receiver in final judgment.
135. Temporary injunction.
136. Filing and publishing judgment.

§ 130. Action by attorney-general to annul corporation when legislature directs.—The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.

From § 1797, Code of Civil Procedure.

§ 131. Action by attorney-general to annul corporation by leave of court.—Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either

1. Offended against any provision of an act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation; or,

Consolidators' Note.—“This article consists of Ch. 15, Tit. 2, Art. 4 of the Code of Civil Procedure, which has been transferred to the General Corporation Law as Art. 7, without change in substance.”

2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or,

3. Forfeited its privileges or franchises, by a failure to exercise its powers; or,

4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Exercised a privilege or franchise, not conferred upon it by law.

From § 1798, Code of Civil Procedure.

§ 132. Notice of application for leave to commence action to annul corporation.— Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.

From § 1799, Code of Civil Procedure.

§ 133. Jury trial.— An action, brought as prescribed in this article, is triable, of course and of right, by a jury, as if it was an action specified in section nine hundred and sixty-eight of the code of civil procedure and without procuring an order, as prescribed in section nine hundred and seventy of the code of civil procedure.¹

From § 1800, Code of Civil Procedure.

§ 134. Injunction and receiver in final judgment.— Where any of the matters, specified in section one hundred and thirty or section one hundred and thirty-one of this article, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its

creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in article nine of this chapter.

From § 1801, Code of Civil Procedure.

§ 135. Temporary injunction.— In an action, brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section six hundred and three of the code of civil procedure, and all the provisions of title second of chapter seventh of the code of civil procedure applicable to an injunction specified in that section, apply to an injunction granted as prescribed in this section, except that it can be granted only by the court.

From § 1802, Code of Civil Procedure.

§ 136. Filing and publishing judgment.— Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

From § 1803, Code of Civil Procedure.

Consolidators' Note.—“ §§ 136, 179, 250, 269, 275. The references in these sections to the ‘State paper’ and the ‘newspaper printed at Albany, in which legal notices are required to be published,’ have been omitted for the reason that the State paper referred to has been abolished and there is no newspaper in Albany in which legal notices generally are required to be published. See Executive Law, § 83, which abolishes the ‘old’ State paper.”

ARTICLE 8

Action to Dissolve Moneyed Corporation

- Section 150. Temporary injunction and receiver in action against moneyed corporation.
151. Order to show cause why injunction and receiver should not be permanent.
152. Inventory and appraisal by receiver.
153. Conversion of assets into cash by receiver.
154. Employment of counsel by receiver.
155. Notice to creditors by receiver.
156. Allowance, rejection and adjustment of claims by receiver.
157. Final settlement and distribution by receiver.
158. Notice of account and accounting by receiver.
159. Proceedings upon accounting.
160. Claims barred after distribution of assets by receiver.
161. Application of article.

§ 150. Temporary injunction and receiver in action against moneyed corporation.—Whenever the attorney-general shall commence an action against a moneyed corporation upon the information of either the superintendent of insurance, or the superintendent of banks, for the dissolution or sequestration of the property or annulment of the charter of a corporation formed under or subject to the banking or insurance law, and shall be satisfied that it is unsafe and inexpedient for such corporation to continue doing business, the supreme court may, on his application, in a case provided by law, appoint a receiver thereof, and may on such appointment grant an injunc-

Consolidators' Note.—“This article embraces L. 1902, Ch. 60, entitled ‘An act to simplify the procedure, facilitate the settlement and reduce the expense of receivers on dissolution of a monied corporation,’ and L. 1904, Ch. 754, entitled ‘An act to simplify the settlement of accounts of receivers on dissolution of a monied corporation.’ By its language, L. 1902, Ch. 60, superseded and repealed all provisions inconsistent. Both acts have been inserted in this chapter as Art. 8 in order to bring together in the chapter so far as possible all provisions relating to the dissolution of corporations which are now scattered in many independent acts and also to bring the acts mentioned in juxtaposition with other provisions applicable to the subject.”

tion restraining such corporation from carrying on its business until the further order of the court. The court may, in its discretion, dispense with notice of the application.

Derivation.—L. 1902, Ch. 60, § 1.

§ 151. Order to show cause why injunction and receiver should not be permanent.—The court, on granting an order without notice, either for the appointment of a receiver or for an injunction, or for both forms of relief, as herein provided, shall make an order that the corporation so proceeded against show cause at a term of the court to be held not more than thirty days thereafter, why such receiver and injunction should not be permanent. Such order shall be served not less than eight days before the date upon which the hearing thereon is to be had. Unless the court otherwise directs, the receiver appointed in the first instance shall be permanent receiver of such corporation, and the injunction shall be continued during the pendency of the litigation. Such receiver shall, unless otherwise ordered by the court, continue to act as such up to and after final judgment, and until the affairs of the corporation shall be finally settled and its property distributed by him according to law. The bond to be given by the receiver on his appointment shall be fixed at such sum and so conditioned that it shall continue in force and effect until the final discharge of such receiver, including any liability which may be incurred by said receiver by virtue of his appointment as such in the final judgment, in case he shall be so named therein.

Derivation.—L. 1902, Ch. 60, § 2.

§ 152. Inventory and appraisal by receiver.—It shall be the duty of the receiver to take an inventory and make an appraisal of the assets and property of the corporation. In case the corporation is subject to the banking law, two disinterested appraisers shall be appointed by the superintendent of banks to aid in this duty, and in case the corporation is subject to the insurance law, such appraisers shall be appointed by the superintendent of insurance.

Ten days' notice of such inventory and appraisal shall be given to the corporation and such inventory and appraisal shall be completed and filed with the clerk of the supreme court in the county in which the trial is to be had, within ninety days after the appointment of such receiver, and a certified copy thereof in the office of the attorney-general, and in the office of the superintendent of banks, or in the office of the superintendent of insurance, as the case may be, unless for good cause shown the officer appointing such appraisers shall, in writing, extend the time for the completion thereof. Such appraisers shall receive as compensation a reasonable sum, not exceeding fifteen dollars per day and actual and necessary expenses, to be paid by the receiver upon the approval of the officer by whom they were named. The receiver shall be chargeable with the amount of such inventory and shall be relieved therefrom to the same extent and upon the same grounds as in the like case of an executor.

Derivation.—L. 1902, Ch. 60, § 3. For remainder of § 3, see § 153 following.

§ 153. Conversion of assets into cash by receiver.—The receiver shall proceed, immediately upon his appointment, to convert the assets of the corporation into cash.

Derivation.—L. 1902, Ch. 60, § 3. For remainder of § 3, see § 152 above.

§ 154. Employment of counsel by receiver.—It shall not be lawful for any receiver to pay to any attorney or counsel any costs, fees or allowance until the amount thereof shall have been stated to the special term, as expenses incurred by such receiver and shall have been approved by that court by an order duly entered. Any such order shall be the subject of review by the appellate division and the court of appeals on appeal thereto taken by any party. The receiver may employ not to exceed one counsel unless the employment of additional counsel shall be authorized by the supreme court after notice to the attorney-general of an application therefor.

Derivation.—L. 1902, Ch. 60, § 4; L. 1904, Ch. 705, § 1.

§ 155. Notice to creditors by receiver.— 1. Within thirty days after a receiver qualifies he shall cause to be published once a week for twelve weeks in a newspaper published at the principal place of business of the corporation, a notice to all creditors of the corporation to present their claims to such receiver at his place of business within fifteen days after the last publication of such order. He shall also mail a copy of such notice to all the creditors of the corporation known to him or as shown on the books of the company, at their last known place of residence. 2. The receiver of any title guaranty company heretofore or hereafter appointed, which company is authorized by law to issue policies of insurance or agreements of indemnity or guaranty, and which corporation has issued and outstanding at the time of the appointment of the receiver, policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, shall not be required to mail to the holders or owners of said policies of insurance or of said agreements, the notice required by law to be given to creditors of an insolvent moneyed corporation; but such receiver shall cause a notice to be published twice a week, for four successive weeks, in two newspapers published in the county where said corporation has its principal place of business; which said notice shall require all creditors and owners and holders of outstanding policies of insurance or agreements of indemnity or guaranty, to exhibit and prove their claim, within sixty days; and, in default of so doing, shall be precluded from all benefit of the judgment and from any and all distribution which may be made thereunder, except that the creditor or holder or owner of any policy or agreement of indemnity or guaranty, who shall exhibit or prove his claim, with an affidavit that he had no notice or knowledge thereof, in time to comply with the provisions hereof, at any time before an order is made directing a final settlement and distribution of assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may be applied, as if his claim had

been exhibited and proved within the time limited by such notice. This subdivision shall apply to receivers of all moneyed corporations.

Amended by L. 1909, Ch. 240, § 34.

Derivation.—L. 1902, Ch. 60, § 5, part; L. 1904, § 754, §§ 1 and 4.

§ 156. Allowance, rejection and adjustment of claims by receiver.—The receiver shall have the same power and authority with reference to the allowance or rejection of claims as is given to executors, and no reference shall be had to pass upon claims except such as may be disputed by such receiver. In case any claim shall be disputed, the receiver shall immediately upon the expiration of the time for the presentation of claims, upon notice to the parties whose claims have been rejected, apply to the court for the appointment of a referee to hear and determine as to the allowance thereof. Claims allowed by the receiver shall be subject to objection upon the final settlement, and their validity may be determined as the validity of claims against estates are determined upon final settlement by a surrogate.

Derivation.—L. 1902, Ch. 60, § 5. For remainder of § 5, see § 155 above.

§ 157. Final settlement and distribution by receiver.—The receiver may apply for a final settlement of his accounts and an order for distribution at any time after the expiration of six months, and shall so apply within eighteen months after qualifying as such. The attorney-general or any creditor, or party interested, may apply for an order that the receiver show cause why an accounting and distribution should not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general, after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver, the court shall direct the receiver to take steps to account with all convenient

speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

Derivation.—L. 1902, Ch. 60, § 6.

§ 158. Notice of account and accounting by receiver.—

1. The receiver shall file his account, together with a statement of the items and amounts claimed by his counsel, up to that date with the court and a duplicate thereof, together with the vouchers, with the attorney-general, at least thirty days before the time fixed for his final settlement and accounting, and the attorney-general shall serve upon the attorney for the receiver any objections he may have to the account, or to the statement as to the items and amounts claimed by counsel for compensation, appearing in such account on or before such hearing. The receiver shall also within ten days after the filing of the account, mail to each creditor of the corporation a notice of the time and place of the filing of his account, and a notice of the time and place of the presentation of the account to the court. Unless objection is made to the items of the account by a creditor or on behalf of the attorney-general, no referee shall be appointed to pass thereon, but the same shall be examined and settled by the court. In case objection is made a referee may be appointed to take the testimony and report the same to the court.

2. Prior to the final settlement of accounts of a receiver of any moneyed corporation, having in force, at the time of his appointment, outstanding policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, said receiver shall give notice to all of the creditors and to the owners or holders of said policies of insurance or agreements of indemnity or guaranty, issued or entered into by such insolvent corporation, by publication of a notice published at least twice a week, for three successive weeks, immediately preceding the making of an application for a final settlement of his accounts and for an order for the distribution of the assets in his hands. Said notice shall state the fact that an ap-

plication for a final settlement of his accounts and for an order for the distribution of the assets in hand will be made, and shall also state the time and place, when and where the application will be made. Upon the hearing of such application and motion, the court shall, unless objection is made to the items of the account by a creditor or by a holder or owner of a policy of insurance or agreement of indemnity or guaranty, or on behalf of the attorney-general, examine and settle the said accounts, and make an order for the settlement, adjustment and distribution of the assets in the hands of the receiver. Where objection is made to the items of account, the court may refer the same to a referee to examine and pass thereon. This subdivision shall apply to receivers of all moneyed corporations heretofore or hereafter appointed.

Amended by L. 1909, Ch. 240, § 35.

Subd. 1 is derived from L. 1902, Ch. 60, § 8.

Subd. 2 is derived from L. 1904, Ch. 754, §§ 2 and 4.

§ 159. Proceedings upon accounting.—Upon any accounting by the receiver, after the expiration of the time for creditors to present claims, the court shall direct the receiver to immediately convert the entire assets of the corporation in his hands into cash, in case any of the assets have not been so converted, unless good and sufficient cause to the contrary shall appear to the satisfaction of the court, such as to authorize an order granting the receiver additional time for that purpose, and upon any such accounting the court shall direct the receiver to distribute the assets of the corporation in his hands to the persons entitled thereto, except so much thereof as may be necessary to be retained for the purpose of administering the trust and making payment upon contested claims, and upon such claims as may thereafter be presented and entitled to be paid. Whenever the attorney-general shall apply for an order to show cause why an accounting should not be had by a receiver by reason of his failure to so account within twelve months after his appointment, and shall deem it advisable to designate

counsel to act on his behalf, the court may, upon the accounting, make a reasonable allowance by way of counsel fee to counsel so designated.

The first sentence is derived from L. 1902, Ch. 60, § 7. The second sentence is derived from L. 1902, Ch. 60, § 10.

§ 160. Claims barred after distribution of assets by receiver.—Upon the granting of the application and the making of the order of distribution, as provided in subdivision two of section one hundred and fifty-eight of this article, and the distribution of the assets in the hands of the receiver, in the manner directed by the order of the court, all claims of the creditors or of holders or owners of policies of insurance or agreements of indemnity or guaranty, against such receiver, shall be barred. This section shall apply to receivers of all moneyed corporations.

Amended by L. 1909, Ch. 240, § 36.

Derivation.—L. 1904, Ch. 754, § 3.

§ 161. Application of article.—Except as provided in sections one hundred and fifty-five, one hundred and fifty-eight, subdivision two, and one hundred and sixty of this article, this article shall apply to all actions for the appointment of receivers of moneyed corporations brought by the attorney-general, and to all receivers of such corporations heretofore or hereafter appointed, and to the settlement and adjustment of their accounts and distribution of assets in their hands, and all proceedings with reference thereto hereafter to be taken, and shall supersede and repeal all provisions of law inconsistent herewith, so far as the same relate to actions for the sequestration, annulment or dissolution of moneyed corporations. As to all other corporations and as to matters not affected by this article, provisions of law heretofore existing shall remain in full force and effect.

Derivation.—L. 1902, Ch. 60, § 9.

ARTICLE 9

Proceedings for Voluntary Dissolution of Corporation**SECTION 170. Petition for voluntary dissolution of corporation.**

171. Directors or trustees may be required to petition.
172. Petition when directors or trustees do not agree.
173. Corporations excepted from two preceding sections.
174. Contents of petition.
175. Affidavit to be annexed to petition.
176. Presentation of petition.
177. Corporations without stockholders.
178. Action by court upon petition for dissolution.
179. Publication of order to show cause why corporation should not be dissolved.
180. Service of order to show cause.
181. Entering and filing order and papers.
182. Temporary receiver.
183. Application for appointment of receiver.
184. Injunction.
185. Referee.
186. Hearing.
187. Decision.
188. Use of original papers on hearing.
189. Amending papers.
190. Final order.
191. Permanent receiver.
192. Appointment of director, trustee or other officer or stockholder as receiver.
193. Certain sales, transfers and judgments void.
194. Omission, defect or default of receiver.
195. Exception of certain corporations.

§ 170. Petition for voluntary dissolution of corporation.—If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the state, discover that the stock, effects, and other property thereof

Consolidators' Note.—“This article consists of Ch. 17, Tit. II, of the Code of Civil Procedure, entitled ‘Proceedings for the voluntary dissolution of a corporation.’ It has been inserted in this chapter as Art. 9 without change but with the addition of one or two provisions not now found in the Code of Civil Procedure, but applicable to the subject.”

are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders that the corporation should be dissolved, they may present a petition to the supreme court praying for a final order dissolving the corporation, as prescribed in this article.

From § 2419, Code of Civil Procedure. See 201 N. Y. 420.

§ 171. Directors or trustees may be required to petition.—It shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders.

From § 2420, Code of Civil Procedure. For remainder of that section, see §§ 172 and 173 following.

§ 172. Petition when directors or trustees do not agree.—If a corporation, created under a general statute of the state for the formation of corporations or under any special act or charter has an even number of trustees or directors who are equally divided respecting the management of its affairs, or if the stock of such corporation is equally divided into not more than two independent ownerships or interests, or if the entire stock of the corporation is, at that time, owned by the trustees or directors who are even in number or equally divided representing the management of its affairs, or if the stock is so divided, that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors and one-half thereof is owned by persons favoring the course of the other trustees or directors, the trustees or directors or the stockholders or one or more of them may present a petition as prescribed in section one hundred and seventy of this chapter.

From § 2420, Code of Civil Procedure. For remainder of that section, see § 171 above, and § 173 following.

§ 173. Corporations excepted from two preceding sections.—Sections one hundred and seventy-one and one hundred and seventy-two of this chapter do not apply to a savings bank, a trust company, a safe-deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

From § 2420, Code of Civil Procedure. For remainder of that section, see §§ 171 and 172 above.

§ 174. Contents of petition.—The petition must show that the case is one of those specified in sections one hundred and seventy and one hundred and seventy-two of this chapter, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, containing the following matters, as far as the petitioner or petitioners know, or have the means of knowing the same:

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand, or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto.

6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge, or otherwise.

7. A full, just, and true account of the capital stock of the corporation, specifying the name of each stockholder; his residence, if it is known, or if it is not known, stating that fact; the number of shares belonging to him; the amount paid in upon his shares; and the amount still due thereupon.

Amended by L. 1909, Ch. 240, § 37.

From § 2421, Code of Civil Procedure.

§ 175. Affidavit to be annexed to petition.—An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.

From § 2422, Code of Civil Procedure.

§ 176. Presentation of petition.—The papers must be presented at a special term of the supreme court, held within the judicial district, embracing the county wherein the principal office of the corporation is located.

From § 2423, Code of Civil Procedure. For remainder of that section, see §§ 178, 181, 182 and 184 following.

§ 177. Corporations without stockholders.—In the case of corporations affected by the provisions of this article and not having stockholders, it shall be sufficient for the purposes of this article to notify, name and refer to the "members" of such corporations, instead of "stockholders," as herein provided.

From § 2431, Code of Civil Procedure. For remainder of that section, see § 195 following.

§ 178. Action by court upon petition for dissolution.—In a case specified in sections one hundred and seventy-one and one hundred and seventy-two of this chapter the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the cause is one of those specified in section one hundred and seventy of this chapter, the court must make an

order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than six weeks after the granting of the order, why the corporation should not be dissolved.

Amended by L. 1909, Ch. 240, § 38.

From § 2423, Code of Civil Procedure. For remainder of that section, see §§ 176, 181, 182 and 184 of this article.

§ 179. Publication of order to show cause why corporation should not be dissolved.—A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in one or more newspapers, specified in the order, published in the city or county wherein the order is entered.

From § 2424, Code of Civil Procedure.

See Consolidators' Note under § 136, General Corporation Law.

§ 180. Service of order to show cause.—A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made either personally, at least ten days before the time appointed for the hearing; or by depositing a copy of the order, at least twenty days before the time so appointed, in the post-office, inclosed in a postpaid wrapper, addressed to the person to be served, at his residence, as stated in the schedule. •

From § 2425, Code of Civil Procedure.

§ 181. Entering and filing order and papers.—The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the county where the principal office of the corporation is located.

From § 2423, Code of Civil Procedure. For remainder of that section, see §§ 176, 178, 182 and 184 of this article.

§ 182. **Temporary receiver.**— If it shall be made to appear to the satisfaction of the court that the corporation is insolvent, the court may at any stage of the proceeding before the final order, on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice to the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one hundred and four of this chapter. The court may also, in its discretion, at any stage in the proceeding after the appointment of a temporary receiver, upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court.

From § 2423, Code of Civil Procedure. For remainder of that section, see §§ 176, 178, 181 and 184 of this article.

§ 183. **Application for appointment of receiver.**— Every application made for the appointment of a receiver of a corporation other than applications made by the attorney-general on behalf of the people of the state, shall be made at a special term of the supreme court held in and for the judicial district in which the principal business office of the corporation is located.

Derivation.— L. 1883, Ch. 378, § 1, part; L. 1896, Ch. 282, § 1.

Consolidators' Note.— "The statute of 1883, a portion of which, is here consolidated, applies to proceedings for the voluntary dissolution of a corporation. *People v. Seneca Lake Grape & Wine Co.*, 52 Hun, 175. See also *U. S. Trust Co. v. N. Y., W. S. & B. R. R. Co.*, 101 N. Y. 478; *McNabb v. Porter Air Lighter Co.*, 44 App. Div. 103; *Matter of Broadway Insurance Co.*, 23 App. Div. 282. A more general provision relating to applications for the appointment of receivers and otherwise will be found in § 314 under the head of provisions applicable to more than two of the actions or proceedings incorporated in this chapter."

§ 184. **Injunction.**—If a temporary receiver be appointed, the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction, restraining the creditors of the corporation, from beginning any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

From § 2423, Code of Civil Procedure. For remainder of that section, see §§ 176, 178, 181 and 182 of this article.

§ 185. **Referee.**—If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable.

From § 2426, Code of Civil Procedure. For remainder of that section, see §§ 186 and 187 of this article.

§ 186. **Hearing.**—At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts.

From § 2426, Code of Civil Procedure. For remainder of that section, see §§ 185 and 187 of this article.

§ 187. **Decision.**—The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits, and other property, and of the debts and other engagements, of the corporation, and of all other matters, pertaining to its affairs.

From § 2426, Code of Civil Procedure. For remainder of that section, see §§ 185 and 186 of this article.

§ 188. **Use of original papers on hearing.**—The court or the referee is entitled to use, upon the hearing, the original petition, and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the writ-

ten order of the judge, or of the referee. In that case, they must be returned with the decision or report.

From § 2427, Code of Civil Procedure. For remainder of that section, see § 189 of this article.

§ 189. Amending papers.—The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or inventory fuller and in greater detail than as originally filed, with the like effect as though said petition and schedules had been originally presented and filed as amended.

From § 2427, Code of Civil Procedure. For remainder of that section, see § 188 of this article.

§ 190. Final order.—Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the state, where such a notice may be served. The notice may be served as prescribed in the code of civil procedure for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice as the court prescribes.

From § 2428, Code of Civil Procedure.

§ 191. Permanent receiver.—Upon an application for a final order, if it appear to the court in a case specified in section one hundred and seventy of this chapter that the corporation is insolvent, or, in a case specified either in that section, or in section one hundred and seventy-one and one hundred and seventy-two of this chapter, that for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not in-

jurious to the public interests, the court must make a final order dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may, if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. Upon the entry of the order the corporation is dissolved. A receiver appointed under this section shall have all the powers, duties and liabilities of receivers under article eleven of this chapter.

Amended by L. 1909, Ch. 240, § 39.

From § 2429, Code of Civil Procedure. For remainder of that section, see §§ 192 and 194 of this article.

§ 192. Appointment of director, trustee or other officer or stockholder as receiver.—The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property.

From § 2429, Code of Civil Procedure. For remainder of that section, see §§ 191 and 194 of this article.

§ 193. Certain sales, transfers and judgments void.—A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this article, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.

From § 2430, Code of Civil Procedure.

§ 194. Omission, defect or default of receiver.—In a proceeding for the voluntary dissolution of a corporation, the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice

may be made by mail upon all persons and corporations not residing or existing within the state, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, confirm any act of a receiver, and any decision, report, order or judgment made in such proceeding.

From § 2429, Code of Civil Procedure. For remainder of that section, see §§ 191 and 192 of this article.

§ 195. **Exception of certain corporations.**— This article does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation.

From § 2431, Code of Civil Procedure. For remainder of that section, see § 177 of this article.

ARTICLE 10

Dissolution of Stock Corporation without Judicial Proceedings

Section 220. Dissolution of stock corporation before beginning business.

221. Dissolution of stock corporation before expiration of time limit.

§ 220. Dissolution of stock corporation before beginning business.—The incorporators named in any certificate of incorporation filed for the purpose of creating a domestic stock corporation, other than a moneyed or transportation corporation, may, before the payment of any part of the capital, and before beginning business, surrender all corporate rights and franchises, by signing, verifying and filing in the office of the secretary of state and the clerk of the county where the certificate of incorporation is filed, a certificate setting forth the names of the incorporators, that no part of the capital has been paid, that there are no liabilities, that such business has not been begun, and surrendering all rights and franchises; and proof of the facts set forth in such certificate to the satisfaction of the secretary of state; and thereupon the said corporation shall be dissolved, and its corporate existence and power shall cease. In case any incorporator of such a corporation shall be deceased, then the aforesaid certificate may be made by the surviving incorporators providing two years shall have elapsed since the date of its incorporation, but in such case the certificate shall set forth the fact that one or more of said incorporators is deceased.

Former § 61, Stock Corporation Law.

Derivation.—L. 1904, Ch. 296, § 1; L. 1908, Ch. 457, § 1.

Consolidators' Note.—“These proceedings for the voluntary dissolution of stock corporations have been transferred to the General Corporation Law from the Stock Corporation Law in order to bring together so far as possible all proceedings and actions relating to the winding up of a corporation.”

§ 221, Dissolution of stock corporation before expiration of time limit.—Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows:

1. The board of directors of any such corporation may at a meeting called for that purpose, upon at least three days' notice to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last known post-office address. Such meeting shall be held in the city, town or village in which the last preceding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting is published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by

attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of state.

2. The secretary of state shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interests.

3. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up.

4. After paying or adequately providing for the debts and obligations of the corporation the directors may, with

the written consent of the holders of two-thirds in amount of the capital stock, sell the remaining assets or any part thereof to a corporation organized under the laws of this or any other state, and engaged in a business of the same general character, and take in payment therefor the stock or bonds or both of such corporation and distribute them among the stockholders, in lieu of money, in proportion to their interest therein, but no such sale shall be valid as against any stockholder, who, within sixty days after the mailing of notice to him of such sale, shall apply to the supreme court in the manner provided by section seventeen of the stock corporation law, for an appraisal of the value of his interest in the assets so sold; unless within thirty days after such appraisal the stockholders consenting to such sale, or some of them, shall pay to such objecting stockholder or deposit for his account, in the manner directed by the court, the amount of such appraisal and upon such payment or deposit the interest of such objecting stockholder shall vest in the person or persons making such payment or deposit.

Former § 57, Stock Corporation Law, altered.

Derivation.—L. 1896, Ch. 932, § 1; L. 1900, Ch. 760, § 1.

See 134 App. Div. 394; 133 App. Div. 10.

ARTICLE 10a***Provisions Applicable to Temporary and Permanent
Receivers of Corporations**

Section 225. Security.

226. Removal or new bond.

227. Notice to sureties upon accounting.

§ 225. **Security.**—A receiver, appointed in an action or special proceeding, must, before entering upon his duties, execute and file with the proper clerk, a bond to the people, with at least two sufficient sureties, in a penalty fixed by the court, judge, or referee, making the appointment, conditioned for the faithful discharge of his duties as receiver; and the execution of any such bond by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond by two sureties. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver or for increasing the same.

Added by L. 1909, Ch. 240, § 40.

From § 715, Code of Civil Procedure, part.

§ 226. **Removal or new bond.**—The court, or, where the order was made out of court, the judge making the order, by or pursuant to which the receiver was appointed, or his successor in office, may, at any time, remove the receiver, or direct him to give a new bond, with new sureties, with the like condition specified in the last section. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver.

Added by L. 1909, Ch. 240, § 40.

From § 715, Code of Civil Procedure, part.

* Article 10a was added to the Consolidated Laws by L. 1909, Ch. 240, § 40.

§ 227. **Notice to sureties upon accounting.**—A receiver who, having executed and filed a bond as provided for in section two hundred and twenty-five or section two hundred and twenty-six of this chapter, before presenting his accounts as receiver, must give notice to the surety or sureties on his official bond, of his intention to present his accounts, not less than eight days before the day set for the hearing on said accounting. The same notice must be given to such surety or sureties where the accounting is ordered on the petition of a person or persons other than the receiver, and in no case shall the receiver's accounts be passed, settled or allowed; unless the said notice provided for in this section shall have first been given to the surety or sureties on the official bond of such receiver.

Added by L. 1909, Ch. 240, § 40.

From § 715, Code of Civil Procedure, part.

ARTICLE 11.**Powers, Duties and Liabilities of Receivers of Corporation**

- Section** 230. Application of this article.
231. Receiver trustee of property.
232. Receiver's title to property.
233. Transfer of assets of corporation to receiver.
234. Security of receiver.
235. Authority of single receiver.
236. Authority where there is more than one receiver.
237. Surviving receivers.
238. Oath of receiver.
239. General powers of receivers.
240. Power of receiver to institute proceedings to recover assets.
241. Power of receiver in the settlement of controversies.
242. Power of receiver to employ counsel.
243. Power of receiver to hold real property.
244. Power of receiver to recover stock subscriptions.
245. Duty of receiver to convert assets into money.
246. Duty of receiver as to private sales.
247. Duty of receiver to keep accounts.
248. Duty of receiver to serve copy of report upon attorney-general and superintendent of banks.
249. Duty of certain receivers to make reports.
250. Duty of receivers to give notice to creditors.
251. Delivery of property and payment of debts to receiver after notice.
252. Penalty for concealing property from receiver.
253. Duty of receiver to call creditors' meeting.
254. Proceedings at creditors' meeting.
255. Deduction of disbursements and commissions by receiver.
256. Refunding consideration of subsisting contracts.
257. Retention of funds for subsisting contracts and pending suits.
258. Payment of debts not due.
259. Allowance of set-offs.
260. Penalties recovered by receiver
261. Order of payment by receiver.
262. Failure to file claim before first dividend.
263. Second dividend by receiver.
264. Surplus to stockholders.
265. Disposition of moneys retained by receivers for suits.

- Section 266. Duty of receiver as to unclaimed dividend.
267. Effect of failure to file claim before second dividend.
268. Final accounting by receiver.
269. Notice of final accounting.
270. Hearing on final accounting.
271. Reference of final account.
272. Further accounting.
273. Removal of receiver.
274. Vacancy.
275. Renunciation by receiver.
276. Control of receiver by court.
277. Commissions and expenses of receiver in voluntary dissolution.
278. Commissions and expenses of receiver except in voluntary dissolution.

Consolidators' Note.—“This article relates to the powers, duties and liabilities of receivers of corporations and unless otherwise provided in specific sections it is made applicable to receivers appointed under Art. 6, relating to actions for sequestration, actions for dissolution and actions to enforce the individual liability of officers and members of corporations, and Art. 9, relating to proceedings for the voluntary dissolution of a corporation. The article consists of the live matter in §§ 66–89 of the Revised Statutes (Pt. 3, Ch. 8, Tit. 4, Art. 3), the sections of the Revised Statutes relating to the powers, duties and obligations of trustees of insolvent debtors (Pt. 2, Ch. 5, Tit. 1, Art. 8) which were made applicable by reference in §§ 66 to 89 above referred to, provisions from the Code of Civil Procedure and finally provisions from independent statutes not found in the Revised Statutes or the Code of Civil Procedure relating to the subject of receivers. The provisions of the Revised Statutes were made applicable by L. 1880, Ch. 245, § 1, subd. 3, p. 368. Section 42 of the Revised Statutes being made applicable to permanent receivers appointed in actions for sequestration, actions for dissolution, etc., under § 1788 of the Code of Civil Procedure and §§ 66 to 89, both inclusive, being made applicable to receivers appointed in proceedings for the voluntary dissolution of a corporation under § 2429 of the Code of Civil Procedure. The provisions of the Code of Civil Procedure relating to receivers and of independent statutes have been incorporated according to their context and judicial construction making them applicable. For convenience, the provisions relating to the powers, duties and liabilities of receivers of corporations have been placed in a separate article where by reference they have been made applicable to such actions and proceedings as they are now applicable to by law.”

§ 230. **Application of this article.**— Unless otherwise provided the provisions of this article shall apply only to permanent receivers appointed pursuant to section one hundred and six or section one hundred and ninety-one of this chapter.

New.

§ 231. **Receiver trustee of property.**— Permanent receivers shall be trustees of the property for the benefit of the creditors of the corporation and of its stockholders.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 67, part.

§ 232. **Receiver's title to property.**— Such receivers shall be vested with all the property, real and personal, of the corporation, from the time of their having filed the security required by law.

Amended L. 1909, Ch. 240, § 41.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 67, part.

§ 233. **Transfer of assets of corporation to receiver.**— In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.●

Derivation.— L. 1884, Ch. 285, § 1.

§ 234. **Security of receiver.**— Before entering upon the duties of their appointment, such receivers shall give such security to the people of the state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 66, part.

§ 235. **Authority of single receiver.**—When one receiver only, shall be appointed, all the provisions herein contained, in reference to several receivers shall apply to him.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 2.

§ 236. **Authority where there is more than one receiver.**—When there are more receivers than one appointed, the debts and property of the corporation may be collected and received by any one of them; and when there are more than two receivers appointed, every power and authority conferred on the receivers may be exercised by any two of them.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 3.

§ 237. **Surviving receivers.**—The survivor or survivors of any receivers shall have all the powers and rights given to receivers. All property in the hands of any receiver at the time of his death, removal or incapacity, shall be delivered to the remaining receiver or receivers, if there be any; or to the successor of the one so dying, removed or incapacitated; who may demand and sue for the same.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 4.

§ 238. **Oath of receiver.**—Before proceeding to the discharge of any of their duties, all such receivers shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the officer or court, that appointed them.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 5.

§ 239. **General powers of receivers.**—The said receivers shall have power:

1. To sue in their own names or otherwise, and recover all the property, debts and things in action, belonging or due to such corporation in the same manner and with the like effect as such corporation might or could have done

if no receivers had been appointed; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor, by such corporation before the appointment of the receiver of such corporation; notwithstanding the notice to creditors the receivers may sue for and recover, any property or effects of the corporation and any debts due to it, at any time, before the day appointed for the delivery or payment thereof;

2. To take into their hands, all the property of such corporation, whether attached, or delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same;

3. In the case of a non-resident, absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his hands, any moneys arising from the sale of such property, all such property and moneys, on paying him his reasonable costs and charges, for attaching and keeping the same, to be allowed by the court having jurisdiction;

4. From time to time, to sell at public auction, all the property, real and personal, vested in them, which shall come to their hands, after giving at least fourteen days' public notice of the time and place of sale, and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one;

5. To allow such credit on the sale of real property by them, as they shall deem reasonable, subject to the provisions of this article for not more than three-fourths of the purchase money; which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold;

6. On such sales, to execute the necessary conveyances and bills of sale;

7. To redeem all mortgages and conditional contracts and all pledges of personal property, and to satisfy any judgments, which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, contracts, pledges or judgments;

8. To settle all matters and accounts between such corporation and its debtors, or creditors, and to examine any person touching such matters and accounts, on oath, to be administered by either of them;

9. Under the order of the court appointing them, to compound with any person indebted to such corporation and thereupon to discharge all demands against such person.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 7, except the last clause of the first paragraph, beginning “notwithstanding,” etc., from R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 10.

§ 240. Power of receiver to institute proceedings to recover assets.—Whenever any receiver of a domestic corporation, or of the property within this state of any foreign corporation, shall have been appointed and qualified, as provided in articles five, six, seven, nine, eleven or twelve of this chapter either before, upon, or after final judgment or order in the action or special proceeding in which such appointment was made, and shall, by his own verified petition, affidavit or other competent proof, show to the supreme court, at a special term thereof, held within the judicial district wherein such appointment was made, that he has good reason to believe that any officer, stockholder, agent or employee of such corporation, or any other person whomsoever, has embezzled or concealed, or withholds or has in his possession or under his control, or has wrongfully disposed of, any property of such corporation which of right ought to be surrendered to the receiver thereof; or that any person can testify concerning the embezzlement, concealment, withholding, possession, control or wrongful disposition of any such property, the court shall make an order, with or without notice, commanding such person or persons to appear at a time and place to be designated in the order, before the court or before a referee named by the court for that purpose, and to submit to an examination concerning such embezzlement, concealment, withholding, possession, control or wrongful disposition of such property; and at

the time of making such order or at any time thereafter, the court may, in its discretion, enjoin and restrain the person or persons so ordered to appear and be examined from in any manner disposing of any property of such corporation which may be in the possession or under the control of the person so ordered to be examined, until the further order of the court in relation thereto. No person so ordered to appear and be examined shall be excused from answering any question on the ground that his answer might tend to convict him of a criminal offense; but his testimony taken upon such examination shall not be used against him in any criminal action or proceeding.

Any person so ordered to appear and be examined shall be entitled to the same fees and mileage, to be paid at the time of serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such an order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

Any person appearing for examination in obedience to such order shall be sworn by the court or referee to tell the truth, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make any voluntary statement in his own behalf concerning the subject of his examination which may seem to him desirable or pertinent thereto.

The court before which such examination is taken, as well as the referee, if one be appointed for that purpose, shall have power to adjourn such examination from time to time, and may rule upon any question or objection arising in the course of such examination, to the same extent that might be done if the person so examined were testifying as a witness in the trial of an action.

When the examination of any person under such order shall be concluded, the testimony shall be signed and sworn to by the person so examined, and shall be filed in the office of the clerk of the county where the action is

pending, or was tried, in which the receiver was appointed; and if from such testimony it shall appear to the satisfaction of the court that any person so examined is wrongfully concealing or withholding, or has in his possession or under his control, any property which of right belongs to such receiver, the court may make an order commanding the person so examined forthwith to deliver the same to such receiver, who shall hold the same subject to the further order of the court in relation thereto; and otherwise, the court may, at the conclusion of any such examination, make such final order in the premises as the interests of justice require.

Derivation.— L. 1898, Ch. 534, §§ 1-5.

§ 241. Power of receiver in the settlement of controversies.— If any controversy shall arise between the receivers and any other person, in the settlement of any demands against such corporation, or of debts due to such corporation the same may be referred to one or more indifferent persons, who may be agreed upon by the receivers and the party, with whom such controversy shall exist, by a writing to that effect, signed by them.

If such referee or referees be not selected by agreement, then the receivers or the other party to the controversy, provided no action at law is pending arising out of any such debts or demands, may serve a notice of their intention to apply to any judge of the supreme court at chambers, residing in the same district with said receivers, for the appointment of one or more referees, specifying the time and place when such application will be made, which notice shall be served at least ten days before the time so therein specified.

On the day so specified, upon due proof of the service of such notice, the judge before whom the application is made may, in his discretion, proceed to select one or more referees, the same in all respects as they are now selected according to the rules and practice of the supreme court.

When any witness to such controversy shall reside out of the county where the said receivers resided at the

time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace.

The officer before whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the receivers in the office of a clerk of the supreme court, and an order shall thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in personal actions pending therein.

The report of the referees shall be filed in the same office where the order for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, §§ 19–25. Sections 19 and 22, as amended by L. 1862, Ch. 373, §§ 1 and 4. Sections 20 and 21, as amended by L. 1907, Ch. 476, § 1.

§ 242. Power of receiver to employ counsel.—If the receiver of a corporation employs counsel he shall within three months after he has qualified as receiver enter into a written contract fixing the compensation of such counsel at not exceeding a certain amount or a certain percentage of the sums received and disbursed by him, which contract must be approved by the supreme court, on at least eight days' notice to the attorney-general. A payment by such receiver to his counsel on account of services shall only be made, pursuant to an order of the court, on notice to the attorney-general and subject to review on the final accounting. A contract with counsel shall not be made for a longer period than eighteen

months, but may be renewed from time to time for periods of not more than one year, if approved by the supreme court on at least eight days' notice to the attorney-general. In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor. It shall be unlawful for receivers of an insurance, banking or railroad corporation, or trust company to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term as provided in section two hundred and forty-nine of this chapter, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby.

Derivation.—"If the receiver" to "In case of the intervention," L. 1883, Ch. 378, § 2-a, added by L. 1906, Ch. 349, § 2. Sentence beginning "In case of the intervention," L. 1883, Ch. 378, § 5. Remainder of section, L. 1883, Ch. 378, § 4, part, as amended by L. 1896, Ch. 139, § 1.

§ 243. Power of receiver to hold real property.—A receiver, appointed by or pursuant to an order or a judgment, in an action in the supreme court or a county court, or in a special proceeding for the voluntary dissolution of a corporation, may take and hold real property, upon such trusts and for such purposes as the court directs, subject to the direction of the court, from time to time, respecting the disposition thereof.

Derivation.—Section 716, Code of Civil Procedure.

Consolidators' Note.—"This section is general in its application and therefore has been inserted. It will be preserved also in the Code of Civil Procedure as it applies to other subjects than corporations."

§ 244. Power of receiver to recover stock subscriptions.
—If there shall be any sum remaining due upon any

share of stock subscribed in such corporation, the receiver shall immediately proceed to recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may commence and prosecute any action or proceeding for the recovery of such sum, without the consent of any creditors of such corporation.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 69.

§ 245. Duty of receiver to convert assets into money.—The receivers shall, as speedily as possible, convert the property, real and personal, of the corporation into money.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 26, part.

§ 246. Duty of receiver as to private sales.—A receiver duly appointed in this state by and pursuant to a judgment in an action, or by and pursuant to an order in a special proceeding, may, upon application to the court by which such judgment was rendered, or such order was made, and upon notice to such parties as may be entitled to notice of applications made in such action or special proceeding, be authorized by the said court to sell or convey the property, whether real or personal, of the corporation of which he is the receiver, at private sale, upon such terms and conditions as the court may direct.

Derivation.—L. 1898, Ch. 522, § 1.

§ 247. Duty of receiver to keep accounts.—They shall keep a regular account of all moneys received by them as receivers; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 26, part.

§ 248. Duty of receiver to serve copy of report upon attorney-general and superintendent of banks.—All receivers of insolvent corporations who are required by law to make and file reports of their proceeding shall at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state, and receivers of such corporations as report to, and are under

the supervision of, the banking department shall on the first day of January and July of each year, during the continuance of their respective trusts, file with the superintendent of banks a report, verified by oath, in such form as the superintendent may prescribe, showing the condition of their respective trusts. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by this section the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.

Derivation.— L. 1880, Ch. 537, § 1; L. 1881, Ch. 639, § 1. The last sentence is taken from L. 1880, Ch. 537, § 2.

§ 249. Duty of certain receivers to make reports.— It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the superintendent of banks; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months.

Derivation.— L. 1883, Ch. 378, § 4, part; L. 1885, Ch. 40, § 1; L. 1896, Ch. 139, § 1.

§ 250. Duty of receivers to give notice to creditors.—The receivers immediately upon their appointment, shall give notice thereof which shall be published for three weeks in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated; and therein shall require,

1. All persons indebted to such corporation, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such receivers and to pay the same.

2. All persons having in their possession any property or effects of such corporation to deliver the same to the said receivers by the day so appointed.

3. All the creditors of such corporation to deliver their respective accounts and demands to the receivers or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

4. All persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified.

Derivation.— Paragraphs 1-3 are from R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 8. Paragraph 4 is derived from R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 70.

See Consolidators' Note under § 136, General Corporation Law.

§ 251. Delivery of property and payment of debts to receiver after notice.—After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 72, part.

§ 252. Penalty for concealing property from receiver.—Every person indebted to such corporation, or having the possession or custody of any property or thing in action, belonging to it, who shall conceal the same, and not de-

liver a just and true account of such indebtedness, or not deliver such property or thing, in action, to the receivers, or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the receivers.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1 Art. 8, § 11.

§ 253. Duty of receiver to call creditors' meeting.—They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment by a notice to be published in the same manner, as hereinbefore directed respecting the publication of the notice of their appointment; in which notice, they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice. Every such notice shall be published at least once in each week, until the time of such meeting.

Derivation.—First clause, to "time of their appointment," R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 74, part; from "by a notice" to "of such meeting," R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 27.

§ 254. Proceedings at creditors' meeting.—At such meeting, or other adjourned meeting thereafter, all accounts and demands for and against such corporation, and all its open and subsisting contracts, shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.

Derivation.—"At such meeting" to "thereafter," from R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 28, part; remainder of section, from R. S., Pt. 3, Ch. 8, Tit. 4 Art. 8, § 74, part.

§ 255. Deduction of disbursements and commissions by receiver.—Out of the moneys in their hands the receivers may first deduct all the necessary disbursements made by them in the discharge of their duty and such commissions as may be allowed by law.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 29.

See § 3320, Code of Civil Procedure.

§ 256. Refunding consideration of subsisting contracts.—If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 75.

§ 257. Retention of funds for subsisting contracts and pending suits.—The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums, which they are hereinbefore authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements. If any suit be pending against the corporation or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, §§ 77, 78.

§ 258. Payment of debts not due.—Every person to whom a corporation shall be indebted on a valuable consideration, for any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed, for the time unexpired of such credit.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 35.

§ 259. **Allowance of set-offs.**—Where mutual credit has been given by any corporation, and any other person, or mutual debts have subsisted between such corporation and any other person, the receivers may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would not have been entitled to a dividend, as hereinbefore directed.

No set-off shall be allowed by such receivers, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, in a suit brought by such receivers.

Derivation.—First paragraph from R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 36. Second paragraph from R. S., Pt. 2, Ch. 5, Art. 8, § 37.

§ 260. **Penalties recovered by receiver.**—All penalties which shall be recovered by any receivers, pursuant to the provisions of this article, shall be deemed a part of the property of the corporation, and shall be distributed as such among its creditors.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 39.

§ 261. **Order of payment by receiver.**—The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows:

1. All debts due by such corporation to the United States, and all debts entitled to a preference under the laws of the United States.

2. All debts that may be owing by the corporation as guardian, executor, administrator or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them, in proportion to their amounts respectively.

3. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens.

4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.

Derivation.—First clause to colon (:), R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 79, part; subd. 1, "all debts due by such corporation to the United States and," R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 32; subd. 1, "all debts entitled to a preference under the laws of the United States," R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 79, part; subd. 2, R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 34; subds. 3 and 4, R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 79, part.

§ 262. Failure to file claim before first dividend.—Every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before the second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 81, part.

§ 263. Second dividend by receiver.—If the whole of the property of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week in a newspaper printed in the county where the principal place of business of such corporation was situated.

Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors, as herein provided.

Derivation.—First paragraph, R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 80. Second paragraph, R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 81, part.

§ 264. Surplus to stockholders.—If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 83.

§ 265. Disposition of moneys retained by receiver for suits.—When any suit pending at the time of the second dividend shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 84.

§ 266. Duty of receiver as to unclaimed dividend.—If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, the receivers shall consider it as relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, § 42.

§ 267. Effect of failure to file claim before second dividend.—After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditors shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 82.

§ 268. **Final accounting by receiver.**—A receiver shall apply within one year after qualifying as such for a final settlement of his accounts and an order for distribution, or shall apply to the court upon notice to the attorney-general for an extension of time, setting forth the reasons why he is unable to close his accounts, which order may be granted in the discretion of the court. The attorney-general or any creditor, or any party interested, may apply for an order that the receiver show cause why an accounting and distribution shall not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver the court shall direct the receiver to take steps to account with all convenient speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

Derivation.—Section 2431b, Code of Civil Procedure.

§ 269. **Notice of final accounting.**—Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in a newspaper, of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered. Said receivers shall also give notice to the sureties on their official bonds, as provided in section two hundred and twenty-seven of this chapter.

Amended by L. 1909, Ch. 240, § 42.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 87.

See note under § 136, General Corporation Law.

§ 270. **Hearing on final accounting.**—Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such ac-

count, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 89, part.

§ 271. Reference of final account.— The referee to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 88.

§ 272. Further accounting.— Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 89, part.

§ 273. Removal of receiver.— Such receivers may be removed by the court.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 85, part.

§ 274. Vacancy.— Any vacancy created by removal, death or otherwise, may be supplied by the court.

Derivation.— R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 85, part.

§ 275. Renunciation by receiver.— Any receiver who shall be desirous of renouncing the trust vested in him, may apply to the court from whom his appointment was received, for an order to all persons interested, to show cause why such renunciation should not be accepted.

Such application shall be accompanied by a full, true and just account of all the transactions of such receiver, and particularly of the property, moneys and effects re-

ceived by him; of all payments made, whether to creditors or otherwise; and of the remaining effects and property of the corporation, in respect to which he was appointed receiver, within his knowledge, and the situation of the same.

To such account shall be annexed the affidavit of the receiver, that the said account is in all respects just and true, according to the best of his knowledge and belief; which affidavit shall be subscribed and sworn to, before the court, to whom the application is made, and shall be certified by the clerk of the court.

Such court, shall thereupon grant an order, directing notice to be given to all persons interested in the property of the corporation, in respect to which such receiver was appointed, to show cause on a day or at a term and at a place therein to be specified, why he should not be permitted to renounce his appointment.

Such notice shall be published, once in each week, for six weeks successively in such newspapers, as such court shall direct.

On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that notice was duly published, the court shall proceed to hear the proofs and allegations of the parties.

If it shall appear that the proceedings of such receiver, in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him; and if such court be satisfied that for any reason it is inexpedient for such receiver to continue in the execution of the duties of his appointment, and that such duties can be executed by another receiver, without injury to the property of the corporation, or to the creditors; and if no good cause to the contrary appear, such court shall grant an order, allowing such receiver to renounce his appointment.

Upon such order being granted, such receiver shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, not-

withstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

The expense of all proceedings in effecting such renunciation shall be paid by the receiver making the application.

Derivation.—R. S., Pt. 2, Ch. 5, Tit. 1, Art. 8, §§ 49, 51, 52, 53, 54, 55, 56, 60, 62.

See note under § 136, General Corporation Law.

§ 276. Control of receiver by court.—The receivers shall be subject to the control of the court and may be compelled to account at any time.

Derivation.—R. S., Pt. 3, Ch. 8, Tit. 4, Art. 3, § 85, part.

§ 277. Commissions and expenses of receiver in voluntary dissolution.—A receiver appointed pursuant to article nine is entitled, in addition to his necessary expenses, to commissions upon the sums received and disbursed by him as the court by which or the judge by whom he is appointed allows, as follows: On the first twenty thousand dollars not exceeding five per centum; on the next eighty thousand dollars, not exceeding two and one-half per centum; and on the remainder, not exceeding one per centum; but in case the commissions of a receiver so computed shall not amount to one hundred dollars, said court or judge may in his or its discretion allow said receiver such a sum not exceeding one hundred dollars for his commissions as shall be commensurate with the services rendered by said receiver.

From § 2431a, Code of Civil Procedure.

§ 278. Commissions and expenses of receiver except in voluntary dissolution.—A receiver of a corporation, except a receiver appointed in proceedings for its voluntary dissolution, is entitled, in addition to his necessary expenses, to such commissions, not exceeding two and one-half per centum upon the sums received and disbursed by him, as the court by which or the judge by whom he is

appointed allows, but except upon a final accounting such a receiver shall not receive on account of his services for any one year a greater amount than twelve thousand dollars, nor for any period less than a year more than at that rate. Upon final accounting, the court may make an additional allowance to such receiver, not exceeding two and one-half per centum upon the sums received and disbursed by him, if the court is satisfied that he has performed services that fairly entitle him to such additional allowance. Where more than one receiver shall be appointed, the compensation herein provided shall be divided between said receivers.

Derivation.— L. 1883, Ch. 378, § 2; L. 1886, Ch. 275, § 1; L. 1901, Ch. 506, § 1; L. 1906, Ch. 349, § 1.

ARTICLE 12

Provisions Applicable to Two or More of the Foregoing Proceedings or Actions

Section 300. Application of preceding articles to certain corporations.

301. Officers and agents may be compelled to testify in certain actions.

302. Injunction staying actions by creditors in certain actions.

303. Creditors of corporation may be brought in to prove their claims in certain actions.

304. When attorney-general must bring certain actions.

305. Requisites of injunction against corporations in certain cases.

306. Appointment of receivers of property of corporations.

307. Judicial suspension or removal of officer of corporation.

308. Application of the last three sections.

309. Misnomer not available in action against stockholder.

310. Appraisal of property of insolvent corporation.

311. Application by attorney-general for removal of receiver and to facilitate closing affairs of receivership.

312. Service of papers upon attorney-general.

313. Designation of depositories of funds in order appointing receiver.

314. Application to the court in certain actions and proceedings.

315. County wherein action may be brought by attorney-general on behalf of the people.

316. Preferences in actions *of proceedings by or against receivers.

§ 300. Application of preceding articles to certain corporations.—Articles fifth, sixth or seventh of this chapter do not apply to a religious corporation; or to a municipal or other political corporation, created by the constitution,

Consolidators' Note.—“This article contains without change the provisions in Ch. 15, Tit. 2, Art. 5, of the Code of Civil Procedure entitled ‘Provisions applicable to two or more of the actions specified in this title,’ and in addition to the provisions of the Code of Civil Procedure certain other statutory provisions of too general a nature to be inserted under any of the preceding articles.”

* So in original.

or by or under the laws of this state; or to any corporation which the regents of the university have power to dissolve, except upon the application of the regents, or of the trustees of such a corporation; and in aid of its liquidation under such dissolution.

From § 1804, Code of Civil Procedure.

§ 301. Officers and agents may be compelled to testify in certain actions.—In an action, brought as prescribed in article fifth, sixth or seventh, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offense, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.

From § 1805, Code of Civil Procedure.

§ 302. Injunction staying actions by creditors in certain actions.—In such an action, the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.

From § 1806, Code of Civil Procedure.

§ 303. Creditors of corporation may be brought in to prove their claims in certain actions.—In such an action,

the court may, at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner, and in such a reasonable time, not less than six months from the first publication of notice of the order as the court directs; and that the creditors, who make default in so doing, shall be precluded from all benefit of the judgment, and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given by publication, in such newspapers, and for such a length of time, as the court directs. Notwithstanding such order any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.

From § 1807, Code of Civil Procedure.

§ 304. When attorney-general must bring certain actions.—Where the attorney-general has good reason to believe, that an action can be maintained in behalf of the people of the state, as prescribed in articles fifth, sixth or seventh of the chapter, except section one hundred and thirty of this chapter, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring

the action, or apply for leave to bring it, if he has good reason to believe, that it can be maintained. Where such an application is made section nineteen hundred and eighty-six of the code of civil procedure applies thereto, and to the action brought in pursuance thereof.

From § 1808, Code of Civil Procedure.

§ 305. Requisites of injunction against corporations in certain cases.—An injunction order, suspending the general and ordinary business of a corporation, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.

From § 1809, Code of Civil Procedure. For remainder of that section, see § 1809, Code of Civil Procedure.

§ 306. Appointment of receivers of property of corporations.—A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in articles fifth, sixth or seventh of this chapter.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

5. Upon the application of the regents of the university, in aid of the liquidation of a corporation whose dissolution they contemplate or have decreed; or upon the application of the trustees of such a corporation, with notice to the regents.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.

From § 1810, Code of Civil Procedure.

§ 307. Judicial suspension or removal of officer of corporation.—A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section ninety of this chapter.

From § 1811, Code of Civil Procedure. See 201 N. Y. 202.

§ 308. Application of the last three sections.—The last three sections apply to an action or special proceeding, against a corporation created by or under the laws of the state, or a trustee, director, or other officer thereof; or against a corporation created by or under the laws of another state, government, or country, or a trustee, director, or other officer thereof, where the corporation does business within the state, or has, within the state, a business agency or a fiscal agency, or an agency for the transfer of its stock.

From § 1812, Code of Civil Procedure. For remainder of that section, see § 1812, Code of Civil Procedure.

§ 309. Misnomer not available in action against stockholder.—Where an action, authorized by a law of the state, is brought against one or more persons, as stockholders of a corporation, an objection to any of the proceedings can not be taken, by a person properly made a defendant in the action on the ground that the plaintiff has joined with him, as a defendant in the action, a person, whose name appears on the stock-books of the cor-

poration, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor.

From § 1813, Code of Civil Procedure. For remainder of that section, see § 1813, Code of Civil Procedure.

§ 310. Appraisal of property of insolvent corporation.—Whenever by reason of the provisions of any law of this state it shall become necessary to appraise in whole or in part the property of any corporation in the hands of a receiver or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

Derivation.—L. 1891, Ch. 34, § 1.

§ 311. Application by attorney-general for removal of receiver and to facilitate closing affairs of receivership.—The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district:

1. For an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or,

2. To compel him to account, or,

3. For such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and

Any appeal from any order made upon any motion under this section shall be to the appellate division of the department in which such motion is made.

Derivation.—L. 1883, Ch. 378, § 7.

§ 312. Service of papers upon attorney-general.—A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding for the dissolution of a corporation or a distribution of its assets, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this section would be ex parte or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy, order or judgment, unless the attorney-general shall appear on the return day and shall have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

Derivation.—L. 1883, Ch. 378, § 8.

§ 313. Designation of depositories of funds in order appointing receiver.—All orders appointing receivers of corporations shall designate therein one or more places of

deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

Derivation.— L. 1883, Ch. 378, § 3.

§ 314. Application to the court in certain actions and proceedings.— All applications to the court shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the state, and all such applications shall be made in the judicial district in which the action is triable.

Derivation.— L. 1883, Ch. 378, § 9; L. 1896, Ch. 282, § 2.

§ 315. County wherein action may be brought by attorney-general on behalf of the people.—An action or proceeding brought by the attorney-general on behalf of the people of the state against any corporation for the purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the state, to be designated by the attorney-general.

Derivation.— L. 1883, Ch. 378, § 1, part; L. 1896, Ch. 282, § 1.

§ 316. Preferences in actions or proceedings by or against receivers.—All actions or other legal proceedings and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to in this chapter, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the state of New York.

Derivation.— L. 1883, Ch. 378, § 10.

ARTICLE 13

Alteration and Repeal of Charter of Corporation

Section 320. Alteration and repeal of charter.

321. Conflicting corporate laws.

§ 320. **Alteration and repeal of charter.**—The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

Former § 40, General Corporation Law.

Derivation.—L. 1895, Ch. 672, § 2.

See 124 App. Div. 265.

§ 321. **Conflicting corporate laws.**—If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

Former § 33, General Corporation Law.

Derivation.—L. 1892, Ch. 687, § 33.

ARTICLE 14

Laws Repealed; Construction: When to Take Effect

Section 330. Laws repealed.

331. Construction.

332. When to take effect.

§ 330. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Former § 34, General Corporation Law, altered.

Derivation.—L. 1892, Ch. 687, § 34.

§ 331. Construction.—Nothing in this chapter shall be construed to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any such corporation, other than a railroad corporation, had or was subject to on the date when this chapter takes effect, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter or the other general laws hereinbefore mentioned.

Former § 36, General Corporation Law, altered.

Derivation.—L. 1892, Ch. 687, § 36.

§ 332. When to take effect.—This chapter shall take effect immediately.*

Schedule of Laws Repealed

Revised Statutes.. Part I, chapter 18, ... All

Revised Statutes.. Part 3, chapter 8, title 4, sections 2, 42

Revised Statutes.. Part 3, chapter 8, title 4, article 3,

§§ 66-91

Laws of	Chapter	Section
1811.....	67.....	All
1811.....	235.....	All
1813.....	78.....	All

* Became a law February 17, 1909.

Laws of	Chapter	Section
1815.....	47.....	All
1815.....	202.....	All
1816.....	58.....	All
1817.....	223.....	All
1818.....	67.....	All
1819.....	102.....	All
1821.....	14.....	All
1822.....	213.....	All
1825.....	325.....	4-11, 13, 14, 17, 18
1828.....	21.....	1, ¶¶ 76, 77, 457 (2d Meet.)
1836.....	284.....	All
1836.....	316.....	All
1838.....	160.....	All
1838.....	161.....	All
1838.....	262.....	All
1839.....	218.....	All
1842.....	165.....	All
1846.....	155.....	All
1846.....	215.....	17, 18
1847.....	100.....	3, 4
1847.....	210.....	All
1847.....	222.....	All
1847.....	270.....	All
1847.....	272.....	All
1847.....	287.....	All
1847.....	398.....	All
1847.....	404.....	All
1847.....	405.....	All
1848.....	37.....	All
1848.....	40.....	All
1848.....	45.....	All
1848.....	140.....	All
1848.....	259.....	All
1848.....	265.....	All
1848.....	360.....	All
1849.....	250.....	All
1849.....	362.....	All
1850.....	71.....	All

Laws of	Chapter	Section
1850.....	140.....	All
1851.....	14.....	All
1851.....	19.....	All
1851.....	98.....	All
1851.....	107.....	All
1851.....	487.....	All
1851.....	497.....	All
1852.....	228.....	All
1852.....	372.....	All
1853.....	53.....	All
1853.....	117.....	All
1853.....	124.....	All
1853.....	135.....	All
1853.....	245.....	All
1853.....	333.....	All
1853.....	471.....	1, 2, 4
1853.....	481.....	All
1853.....	502.....	All
1853.....	626.....	All
1854.....	3.....	All
1854.....	87.....	All
1854.....	140.....	All
1854.....	201.....	All
1854.....	232.....	All
1854.....	269.....	All
1854.....	282.....	All
1854.....	312.....	All
1855.....	301.....	All
1855.....	302.....	All
1855.....	390.....	All
1855.....	478.....	All
1855.....	485.....	All
1855.....	495.....	All
1855.....	546.....	All
1855.....	559.....	All
1856.....	65.....	All
1857.....	29.....	All
1857.....	83.....	All

Laws of	Chapter	Section
1857.....	185.....	All
1857.....	202.....	All
1857.....	262.....	All
1857.....	444.....	All
1857.....	546.....	All
1857.....	558.....	All
1857.....	643.....	All
1857.....	776.....	All
1858.....	10.....	All
1858.....	125.....	All
1858.....	348.....	All
1859.....	209.....	All
1859.....	311.....	All
1859.....	455.....	All
1860.....	116.....	All
1860.....	269.....	All
1860.....	523.....	All
1861.....	149.....	All
1861.....	170.....	All
1861.....	215.....	All
1861.....	238.....	All
1862.....	205.....	All
1862.....	248.....	All
1862.....	425.....	All
1862.....	438.....	All
1862.....	449.....	All
1862.....	472.....	All
1863.....	63.....	All
1863.....	134.....	All
1863.....	346.....	All
1864.....	85.....	All
1864.....	337.....	All
1864.....	517.....	All
1864.....	582.....	All
1865.....	234.....	All
1865.....	246.....	All
1865.....	307.....	All
1865.....	691.....	All

Laws of	Chapter	Section
1865.....	780.....	All
1866.....	73.....	All
1866.....	259.....	All
1866.....	322.....	All
1866.....	371.....	All
1866.....	697.....	All
1866.....	780.....	All
1866.....	799.....	All
1866.....	838.....	All
1867.....	12.....	All
1867.....	49.....	All
1867.....	248.....	All
1867.....	254.....	All
1867.....	419.....	All
1867.....	480.....	All
1867.....	509.....	All
1867.....	775.....	All
1867.....	906.....	All
1867.....	937.....	All
1867.....	960.....	All
1867.....	971.....	All
1867.....	974.....	All
1868.....	253.....	All
1868.....	290.....	All
1868.....	573.....	All
1868.....	781.....	All
1869.....	234.....	All
1869.....	237.....	All
1869.....	605.....	All
1869.....	706.....	All
1869.....	844.....	All
1869.....	917.....	All
1870.....	124.....	All
1870.....	135.....	All
1870.....	322.....	All
1870.....	443.....	All
1870.....	568.....	All
1870.....	773.....	All

Laws of	Chapter	Section
1871.....	95.....	All
1871.....	481.....	All
1871.....	535.....	All
1871.....	560.....	All
1871.....	652.....	All
1871.....	657.....	All
1871.....	669.....	All
1871.....	697.....	All
1871.....	883.....	All
1872.....	81.....	All
1872.....	128.....	All
1872.....	146.....	All
1872.....	248.....	All
1872.....	283.....	All
1872.....	350.....	All
1872.....	374.....	All
1872.....	426.....	All
1872.....	609.....	All
1872.....	611.....	All
1872.....	779.....	All
1872.....	780.....	All
1872.....	820.....	All
1872.....	829.....	All
1872.....	843.....	All
1873.....	151.....	All
1873.....	352.....	All
1873.....	432.....	All
1873.....	440.....	All
1873.....	469.....	All
1873.....	616.....	All
1873.....	634.....	All
1873.....	710.....	All
1873.....	737.....	All
1873.....	814.....	All
1874.....	76.....	All
1874.....	143.....	All
1874.....	149.....	All

Laws of	Chapter	Section
1874.....	240.....	All
1874.....	288.....	All
1874.....	430.....	All
1875.....	4.....	All
1875.....	58.....	All
1875.....	88.....	All
1875.....	108.....	All
1875.....	113.....	All
1875.....	119.....	All
1875.....	120.....	All
1875.....	159.....	All
1875.....	193.....	All
1875.....	256.....	All
1875.....	319.....	All
1875.....	343.....	2, 4, 8
1875.....	365.....	All
1875.....	445.....	All
1875.....	510.....	All
1875.....	586.....	All
1875.....	598.....	All
1875.....	606.....	All
1875.....	611.....	All
1876.....	77.....	All
1876.....	135.....	All
1876.....	190.....	All
1876.....	198.....	All
1876.....	280.....	All
1876.....	358.....	All
1876.....	373.....	All
1876.....	415.....	All
1876.....	435.....	All
1876.....	446.....	All
1877.....	103.....	All
1877.....	158.....	All
1877.....	164.....	All
1877.....	171.....	All
1877.....	224.....	All

Laws of	Chapter	Section
1877.....	266.....	All
1877.....	311.....	All
1877.....	374.....	All
1878.....	35.....	All
1878.....	61.....	All
1878.....	85.....	All
1878.....	121.....	All
1878.....	163.....	All
1878.....	203.....	All
1878.....	210.....	All
1878.....	261.....	All
1878.....	264.....	All
1878.....	316.....	All
1878.....	334.....	All
1878.....	394.....	All
1879.....	214.....	All
1879.....	253.....	All
1879.....	290.....	All
1879.....	293.....	All
1879.....	350.....	All
1879.....	377.....	All
1879.....	393.....	All
1879.....	395.....	All
1879.....	413.....	All
1879.....	415.....	All
1879.....	441.....	All
1879.....	503.....	All
1879.....	505.....	All
1879.....	512.....	All
1879.....	541.....	All
1880.....	5.....	All
1880.....	85.....	All
1880.....	90.....	All
1880.....	94.....	All
1880.....	113.....	All
1880.....	133.....	All
1880.....	155.....	All

Laws of	Chapter	Section
1880.....	182.....	All
1880.....	187.....	All
1880.....	223.....	All
1880.....	225.....	All
1880.....	241.....	All
1880.....	245.....	1, ¶ 3, subd. 5, part relating to receivers appointed as prescribed in Code Civil Procedure, § 2429
1880.....	254.....	All
1880.....	263.....	All
1880.....	267.....	All
1880.....	349.....	All
1880.....	415.....	All
1880.....	417.....	All
1880.....	474.....	All
1880.....	484.....	All
1880.....	510.....	All
1880.....	537.....	All
1880.....	575.....	All
1880.....	582.....	All
1880.....	583.....	All
1880.....	585.....	All
1881.....	22.....	All
1881.....	58.....	All
1881.....	77.....	All
1881.....	116.....	All
1881.....	117.....	All
1881.....	148.....	All
1881.....	213.....	All
1881.....	232.....	All
1881.....	295.....	All
1881.....	296.....	All
1881.....	311.....	All
1881.....	313.....	All
1881.....	321.....	All
1881.....	337.....	All

Laws of	Chapter	Section
1881.....	338.....	All
1881.....	351.....	All
1881.....	399.....	All
1881.....	422.....	All
1881.....	464.....	All
1881.....	468.....	All
1881.....	470.....	All
1881.....	472.....	All
1881.....	485.....	All
1881.....	551.....	All
1881.....	589.....	All
1881.....	639.....	All
1881.....	649.....	All
1881.....	650.....	All
1881.....	674.....	All
1881.....	685.....	All
1882.....	73.....	All
1882.....	82.....	All
1882.....	140.....	All
1882.....	273.....	All
1882.....	289.....	All
1882.....	290.....	All
1882.....	306.....	All
1882.....	309.....	All
1882.....	331.....	All
1882.....	349.....	All
1882.....	353.....	All
1882.....	393.....	All
1882.....	405.....	All
1883.....	46.....	All
1883.....	71.....	All
1883.....	102.....	All
1883.....	216.....	All
1883.....	232.....	All
1883.....	237.....	All
1883.....	238.....	All
1883.....	240.....	All
1883.....	287.....	All

Laws of	Chapter	Section
1883.....	323.....	All
1883.....	361.....	All
1883.....	378.....	All
1883.....	381.....	All
1883.....	382.....	All
1883.....	384.....	All
1883.....	386.....	All
1883.....	387.....	All
1883.....	388.....	All
1883.....	409.....	All
1883.....	482.....	All
1883.....	483.....	All
1883.....	497.....	All
1884.....	140.....	All
1884.....	193.....	All
1884.....	208.....	All
1884.....	223.....	All
1884.....	252.....	All
1884.....	267.....	All
1884.....	285.....	I
1884.....	367.....	All
1884.....	386.....	All
1884.....	397.....	All
1884.....	421.....	All
1884.....	422.....	All
1884.....	439.....	All
1884.....	441.....	All
1884.....	444.....	All
1885.....	40.....	All
1885.....	84.....	All
1885.....	127.....	All
1885.....	141.....	All
1885.....	153.....	All
1885.....	171.....	All
1885.....	305.....	All
1885.....	369.....	All
1885.....	422.....	All
1885.....	423.....	All

Laws of	Chapter	Section
1885.....	489.....	All
1885.....	498.....	All
1885.....	535.....	All
1885.....	540.....	All
1885.....	549.....	All
1886.....	65.....	All
1886.....	182.....	All
1886.....	271.....	All
1886.....	275.....	All
1886.....	310.....	All
1886.....	321.....	All
1886.....	322.....	All
1886.....	403.....	All
1886.....	415.....	All
1886.....	509.....	All
1886.....	551.....	All
1886.....	579.....	All
1886.....	586.....	All
1886.....	592.....	All
1886.....	601.....	All
1886.....	605.....	All
1886.....	634.....	All
1886.....	642.....	All
1887.....	450.....	All
1887.....	486.....	All
1887.....	536.....	All
1887.....	570.....	All
1887.....	601.....	All
1887.....	616.....	All
1887.....	622.....	All
1887.....	724.....	All
1888.....	189.....	All
1888.....	306.....	All
1888.....	313.....	All
1888.....	359.....	All
1888.....	394.....	All
1888.....	447.....	All
1888.....	462.....	All

Laws of	Chapter	Section
1888.....	513.....	All
1888.....	514.....	All
1888.....	549.....	All
1888.....	560.....	All
1889.....	57.....	All
1889.....	76.....	All
1889.....	78.....	All
1889.....	236.....	All
1889.....	242.....	All
1889.....	281.....	All
1889.....	332.....	All
1889.....	369.....	All
1889.....	426.....	All
1889.....	519.....	All
1889.....	524.....	All
1889.....	531.....	All
1889.....	532.....	All
1889.....	564.....	All
1890.....	23.....	All
1890.....	98.....	All
1890.....	119.....	All
1890.....	193.....	All
1890.....	292.....	All
1890.....	416.....	All
1890.....	421.....	All
1890.....	483.....	All
1890.....	497.....	All
1890.....	505.....	All
1890.....	508.....	All
1890.....	543.....	All
1890.....	563.....	All
1891.....	34.....	Part relating to appraisal of property of insolvent corporations
1891.....	38.....	All
1891.....	57.....	All
1891.....	287.....	All
1892.....	2.....	All

Laws of	Chapter	Section
1892.....	19.....	4
1892.....	687.....	All except 37
1894.....	136.....	All
1894.....	400.....	All
1895.....	672.....	All
1896.....	139.....	All
1896.....	282.....	All
1896.....	932.....	1, part adding § 57 to L. 1892, Ch. 688
1898.....	522.....	Part relating to receivers of corporations
1898.....	534.....	All
1899.....	201.....	All
1900.....	177.....	All
1900.....	704.....	All
1900.....	733.....	All
1900.....	760.....	All
1901.....	96.....	All
1901.....	214.....	All
1901.....	355.....	All
1901.....	506.....	All
1901.....	538.....	All
1902.....	9.....	All
1902.....	60.....	All
1902.....	285.....	All
1903.....	178.....	All
1904.....	236.....	All
1904.....	296.....	All
1904.....	490.....	All
1904.....	705.....	All
1904.....	737.....	All
1904.....	754.....	All
1905.....	256.....	All
1906.....	228.....	All
1906.....	239.....	All
1906.....	349.....	All
1906.....	531.....	All
1907.....	115.....	All

Laws of	Chapter	Section
1908.....	457.....	All
Code Civil Procedure.....	432,	subd. 2, from words “by a writing” to “an authentication;” 716, pt. relating to corporations; 1781-1808; 1809, pt. re- lating to corporations; 1810, 1811; 1812, 1813, pt. relating to corpora- tions; 2411; 2412-2414, pt. relating to corpora- tions; 2415, 2416, 2419- 2431b; 3390-3396, pt. re- lating to corporations

STOCK CORPORATION LAW

Laws of 1909, Chapter 61, entitled "AN ACT relating to stock corporations, constituting Chapter Fifty-nine of the Consolidated Laws."

- Article 1. Short title (§ 1).
2. General provisions (§§ 5-18).
3. Directors and officers (§§ 25-35).
4. Stock and stockholders (§§ 50-70).
5. Laws repealed; when to take effect (§§ 80, 81).

ARTICLE 1

Short Title

Section 1. Short title.

§ 1. Short title.—This chapter shall be known as the "Stock Corporation Law."

Derivation.—L. 1890, Ch. 564, § 1; L. 1892, Ch. 688, § 1.

ARTICLE 2

General Provisions

- Section 5. Application of article.
6. Power to borrow money and mortgage property.
7. Validating corporate mortgages.
8. Power to guarantee bonds of other corporations.
9. Reorganization upon sale of corporate property.*
10. Contents of plan or agreement.
11. Sale of property; possession of receiver and suits against him.

The original Stock Corporation Law was Chapter 36 of the "General Laws," being L. 1890, Ch. 564. It was re-enacted by L. 1892, Ch. 688. *

* So in original.

- Section 12. Municipalities may assent to plan of readjustment.
13. Change of place of business.
14. Combinations prohibited.
15. Merger.
16. Voluntary sale of franchise and property.
17. Rights of non-consenting stockholders on voluntary sale of franchise and property.
18. Alterations or extension of business.

§ 5. **Application of article.**— This article except sections eight, fifteen, sixteen, seventeen and eighteen thereof, shall not apply to moneyed corporations.

Derivation.— L. 1890, Ch. 564, § 1, part; L. 1892, Ch. 688, § 1.

“A moneyed corporation is a corporation formed under or subject to the banking or the insurance law.” See § 3, subd. 4, General Corporation Law.

§ 6. **Power to borrow money and mortgage property.**— In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase-money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the

secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the secretary of state, and a duplicate thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth,

1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds;

2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by such corporation;

3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion;

4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock.

If the corporation be a railroad corporation the certificate shall have endorsed thereon the approval of the public service commission having jurisdiction thereof. When the certificate herein provided for has been filed,

the capital stock of such corporation shall be increased to the amount specified in such certificate.

Former § 2, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 2; L. 1892, Ch. 337, § 1; L. 1892, Ch. 688, § 2; L. 1901, Ch. 354, § 1; L. 1905, Ch. 745, § 1.

Compare L. 1864, Ch. 517, § 2; L. 1867, Ch. 480, § 1; L. 1869, Ch. 706, § 1; L. 1871, Ch. 481, § 2; L. 1875, Ch. 88, § 1; L. 1875, Ch. 611, § 13; L. 1878, Ch. 163, § 1; L. 1878 Ch. 203, § 39; L. 1880, Ch. 182, § 1; L. 1888, Ch. 394.

See 197 N. Y. 408; 163 N. Y. 423; 159 N. Y. 137; 122 N. Y. 165; 99 N. Y. 547; 85 N. Y. 453; 80 N. Y. 345; 129 App. Div. 140.

A stock corporation, other than a banking or insurance corporation, may mortgage its property in any amount.

For forms of Consent and Certificate of Vote or Consent to Mortgage, see Forms Nos. 17 and 18.

§ 7. Validating corporate mortgages.—Whenever any mortgage affecting property or franchises within this state heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this state shall be presumptive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this state containing the mortgaged premises or any part thereof, and the corporation shall have received value for bonds actually issued under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insuf-

iciency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this state, provided in either case that such action shall have been so begun by or in behalf of the corporation by direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this state, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and uncanceled. Nothing in this section contained shall affect any right or any remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the

public service commission having jurisdiction thereof to any mortgage by a railroad corporation.

Former § 8, Stock Corporation Law.

Derivation.—L. 1901, Ch. 354, § 2.

This section by its terms applies to domestic and foreign corporations.

§ 8. Power to guarantee bonds of other corporations.—Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last-known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last-known post-office address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

Part of former § 40, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 40; L. 1892, Ch. 688, § 40; L. 1902, Ch. 601, § 1.

Compare L. 1855, Ch. 67, § 7; L. 1848, Ch. 37, § 8; L. 1848, Ch. 40, § 8; L. 1849, Ch. 259, § 13; L. 1850, Ch. 140, § 8; L. 1853, Ch. 117, § 8; L. 1853, Ch. 135, § 10; L. 1854, Ch. 232, § 8; L. 1857, Ch. 546, § 8; L. 1867, Ch. 974, § 8; L. 1872, Ch. 146, § 1; L. 1874, Ch. 143, § 8; L. 1878, Ch. 203, § 9; L. 1888, Ch. 462, § 5.

See 148 N. Y. 441, 652; 143 N. Y. 292; 137 N. Y. 231; 139 N. Y. 146; 150 N. Y. 410; 159 N. Y. 287; 37 App. Div. 618; 45 App. Div. 231; 56 Misc. 49; 32 Misc. 1.

§ 9. Reorganization upon sale of corporate property and franchises.— When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office addresses of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its manage-

ment, contained in any plan or agreement which may have been entered into as provided in section ten of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended and any and all incorporations based thereon are hereby ratified and confirmed.

Former § 3, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 3; L. 1892, Ch. 688, § 3; L. 1901, Ch. 354, § 1; L. 1902, Ch. 80, § 1; L. 1904, Ch. 706, § 1.

Compare L. 1873, Ch. 469; L. 1874, Ch. 430, §§ 1, 2; L. 1878, Ch. 203, § 5.

A reorganization tax of one-twentieth of one per cent. must be paid. See 110 N. Y. 443; 13 App. Div. 50; 47 Hun, 467.

See also 164 N. Y. 41; 52 App. Div. 195.

§ 10. Contents of plan or agreement.—At or previous to the sale the purchasers thereof, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees, stockholders, or any of them, of the corporation owning such property and franchises at the time of the sale, and of holders of claims for materials, supplies and equipment furnished, and for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the

bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation or any claims for materials, supplies and equipment furnished, or any claims for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation.

Amended by L. 1911, Ch. 858, in effect July 29, 1911.

Former § 4, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 4; L. 1892, Ch. 688, § 4; L. 1901, Ch. 354, § 1.

Compare L. 1873, Ch. 469; L. 1874, Ch. 430, §§ 1, 2.

§ 11. Sale of property; possession of receiver and suits against him.—The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mort-

gages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on wilful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

Former § 5, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 5; L. 1892, Ch. 688, § 5.

Compare L. 1873, Ch. 469; L. 1874, Ch. 430, §§ 1, 2; L. 1876, Ch. 446, §§ 1, 2.

§ 12. Municipalities may assent to plan of readjustment.—The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

Former § 6, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 6; L. 1892, Ch. 688, § 6; L. 1901, Ch. 354, § 1.

Compare L. 1874, Ch. 430, § 4.

§ 13. Change of place of business.—Any stock corporation now existing or hereafter organized under the laws of this state, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or, to which it may have been changed under the provisions of this section, to any other city, town or county in this state, in which it may desire to actually transact and carry on its regular business from day to day, provided that such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the secretary of state, or by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business

of such corporation shall be changed as stated in said certificate.

Former § 59, Stock Corporation Law.

Derivation.— L. 1896, Ch. 929, § 1; L. 1905, Ch. 489, § 1.

Compare L. 1864, Ch. 517, § 1.

For forms of Consent and Certificate of Vote or Consent to Change of Place of Business, see Forms Nos. 19 and 20.

§ 14. Combinations prohibited.— No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

Former § 7, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 7; L. 1892, Ch. 688, § 7; L. 1897, Ch. 384, § 1.

Compare L. 1854, Ch. 232, § 22.

See 148 N. Y. 58; 146 N. Y. 407; 145 N. Y. 267; 143 N. Y. 537; 133 N. Y. 562; 121 N. Y. 582; 125 App. Div. 804; 124 App. Div. 401; 37 App. Div. 618; 32 Misc. 1.

§ 15. Merger.— Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other cor-

poration or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

Former § 58, Stock Corporation Law.

Derivation.—L. 1896, Ch. 932, § 1; L. 1900, Ch. 476, § 1; L. 1902, Ch. 98, § 1.

Section 15 of the General Corporation Law was not enacted for the benefit of foreign corporations. If a corporation fails to obtain the license thereby required, it cannot take advantage of its failure to obey the statute to defeat an action brought against it in this state. *Gaul v. Kiel & Arthe Co.*, 199 N. Y. 472.

For form of Certificate of Merger, see Form No. 21.

§ 16. Voluntary sale of franchise and property.—A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold, in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or con-

veyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting.

Part of former § 33, Stock Corporation Law.

Derivation.—L. 1893, Ch. 638, § 2; L. 1901, Ch. 130, § 1.

See 200 N. Y. 177; 56 Misc. 278.

§ 17. Rights of non-consenting stockholders on voluntary sale of franchise and property.—If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter, object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

Part of former § 33, Stock Corporation Law.

Derivation.—L. 1893, Ch. 638, § 1; L. 1901, Ch. 130, § 1.

See 200 N. Y. 514; 189 N. Y. 560, aff'g 119 App. Div. 749.

§ 18. **Alterations or extension of business.** Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

Former § 32, Stock Corporation Law.

Derivation.— L. 1892, Ch. 688, § 32; L. 1901, Ch. 354, § 1; L. 1905, Ch. 751, § 1.

Compare L. 1888, Ch. 513, § 1.

See 138 N. Y. 151.

ARTICLE 3

Directors and Officers

- Section 25. Directors.
26. Change of number of directors.
 27. When acts of directors void.
 28. Liability of directors for making unauthorized dividends.
 29. Liability of directors for loans to stockholders.
 30. Officers.
 31. Inspectors and their oath.
 32. Books to be kept.
 33. Stock books of foreign corporations.
 34. Annual report to secretary of state.
 35. Liability of officers for false certificates, reports or public notices.

§ 25. Directors.—The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policyholders of an insurance corporation shall be eligible to election as directors, whether or not they be stockholders. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

Former § 20, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 20; L. 1892, Ch. 688, § 20; L. 1901, Ch. 354, § 1; L. 1906, Ch. 238, § 1.

Compare L. 1811, Ch. 67, § 3; L. 1847, Ch. 210, § 38; L. 1848, Ch. 37, § 3; L. 1848, Ch. 40, § 3; L. 1848, Ch. 259, § 5; L. 1850, Ch. 140, § 5; L. 1852, Ch. 228, § 3; L. 1853, Ch. 117, § 3; L. 1853, Ch. 135, §§ 3, 7; L. 1853, Ch. 395, § 6; L. 1854, Ch. 232, § 3; L. 1854, Ch. 282,

§ 1; L. 1855, Ch. 425; L. 1857, Ch. 546, § 3; L. 1860, Ch. 269, § 1; L. 1867, Ch. 971, § 5; L. 1867, Ch. 974, § 5; L. 1873, Ch. 710; L. 1875, Ch. 606, § 11; L. 1875, Ch. 611, §§ 10, 26; L. 1877, Ch. 228, § 4; L. 1878, Ch. 203, § 5; L. 1879, Ch. 393, § 1; L. 1888, Ch. 462, § 4.

See 163 N. Y. 423; 132 App. Div. 3; 116 App. Div. 58.

The election of directors and the rights of stockholders thereat are regulated by § 23 of the General Corporation Law. Any stockholder may call a meeting for the election of directors, if the latter fail to call a meeting within one month from the day designated by law or in the by-laws, or if the election result in a failure to elect directors. See § 29, General Corporation Law.

For provisions relating to the appointment of inspectors of election, their compensation and oaths (which must be filed in the county clerk's office, together with a certificate of the result of the vote), see § 31, Stock Corporation Law.

For form of Notice of Annual Election, see Form No. 22.

§ 26. Change of number of directors.—The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held* on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the

* The words "at the usual place of meeting of the directors" were stricken out by L. 1909, Ch. 421, § 1.

custodian of the stock book of such corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

Amended by L. 1909, Ch. 421, §§ 1 and 2, taking effect May 21, 1909.

Former § 21, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 21; L. 1891, Ch. 57; L. 1892, Ch. 688, § 21; L. 1903, Ch. 320, § 1; L. 1904, Ch. 307, § 1; L. 1905, Ch. 750, § 1.

Compare L. 1848, Ch. 37; L. 1860, Ch. 269, § 2; L. 1863, Ch. 134, § 1; L. 1867, Ch. 248, § 2; L. 1875, Ch. 4, § 1; L. 1875, Ch. 611, § 10; L. 1878, Ch. 316, § 2; L. 1879, Ch. 395, § 1; L. 1881, Ch. 422; L. 1885, Ch. 171, § 1; L. 1890, Ch. 23.

See 186 N. Y. 215, rev'g 114 App. Div. 856; 160 N. Y. 500; 183 N. Y. 578; 125 N. Y. 25; 159 N. Y. 287; 109 App. Div. 49; 71 Misc. 511.

For forms of above Consent and Certificate of Consent or Vote, see Forms Nos. 23 and 24.

For form of Affidavit of Custodian of Stock Book, see Form No. 25.

§ 27. When acts of directors void.— When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

Former § 22, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 22; L. 1892, Ch. 688, § 22.

Compare L. 1885, Ch. 489.

See § 28, General Corporation Law.

§ 29, General Corporation Law, gives the right to “any member of the corporation” in certain cases to call a meeting for the election of directors.

§ 28. Liability of directors for making unauthorized dividends.— The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the

expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

Former § 23, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 23; L. 1892, Ch. 688, § 23; L. 1901, Ch. 354, § 1.

Compare R. S., Part I, Ch. 18, Title 4, § 2, 8th Ed., p. 1728; Birdseye's Ed., p. 678; L. 1848, Ch. 40, § 13; L. 1854, Ch. 232, § 14; L. 1857, Ch. 546, § 13; L. 1875, Ch. 611, § 19.

See 160 N. Y. 21, 32; 136 App. Div. 241.

§ 29. Liability of directors for loans to stockholders.—No loan of moneys shall be made by any stock corporation, except a moneyed corporation or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any instalment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

Former § 25, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 25; L. 1892, Ch. 688, § 25.

Compare L. 1848, Ch. 40, § 14; L. 1853, Ch. 117, § 14; L. 1875, Ch. 611, § 20.

See 57 N. Y. 133; 62 Hun, 63; 30 Hun, 314.

§ 30. Officers.—The directors of a stock corporation may appoint from their number a president, and may ap-

point a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policyholders of an insurance corporation shall be eligible to election or appointment as its officers.

Former § 27, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 27; L. 1892, Ch. 688, § 27. •

Compare L. 1848, Ch. 40, § 5; L. 1853, Ch. 117, § 5; L. 1853, Ch. 135, § 6; L. 1854, Ch. 232, § 5; L. 1857, Ch. 546, § 6; L. 1874, Ch. 143, § 5; L. 1875, Ch. 611, §§ 6, 10; L. 1877, Ch. 228, § 5; L. 1878, Ch. 203, § 7.

The president, while required to be a director (§ 30, Stock Corporation Law), need not be a stockholder. See § 25, Stock Corporation Law. The other officers need not be directors. See 201 N. Y. 194.

§ 31. Inspectors and their oath.—The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a moneyed corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk

of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

Former § 28, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 28; L. 1892, Ch. 688, § 28.

See 53 App. Div. 65.

See §§ 23 and 27, General Corporation Law, relating to qualifications of stockholders as voters and to powers of inspectors.

For forms of Oath and Certificate of Inspectors of Election, see Forms Nos. 26 and 27.

§ 32. **Books to be kept.**—Every stock corporation shall keep at its office, correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours, for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect

or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom.

Former § 29, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 29; L. 1892, Ch. 688, § 29; L. 1900, Ch. 128, § 1; L. 1901, Ch. 354, § 1.

Compare L. 1848, Ch. 40, § 25; L. 1853, Ch. 117, § 25; L. 1874, Ch. 143, § 14; L. 1875, Ch. 611, §§ 16, 17.

See § 665, Penal Law, *post*.

It was formerly provided that the books of account, as well as the stock book, were to be open to the inspection of "stockholders and creditors of the corporation, and their personal representatives." See L. 1890, Ch. 564. An amendment required the inspection of the stock book only, and confined the right of inspection to "stockholders and judgment creditors." See L. 1892, Ch. 688, § 29. This language was retained by L. 1901, Ch. 354. It would seem, therefore, that the penalty provided in the last sentence for the neglect or refusal of any officer or agent of a corporation to allow an inspection of books or the making of extracts therefrom applies only to the stock book, notwithstanding the use of the word them.

See 175 N. Y. 328; 163 N. Y. 423; 159 N. Y. 250; 120 App. Div. 756; 117 App. Div. 79; 115 App. Div. 821; 106 App. Div. 349; 103 App. Div. 208; 45 App. Div. 499; 62 Misc. 252; 46 Misc. 96; 43 Misc. 681; 30 Misc. 44.

For form of Stock Book, see Form No. 28.

§ 33. Stock books of foreign corporations.—Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the state authorized by law to investigate the affairs of

any such corporation. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made.

Former § 53, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 56; L. 1892, Ch. 688, § 53; L. 1897, Ch. 384, § 3.

Compare L. 1842, Ch. 165, §§ 1, 2.

See § 665, Penal Law.

See 196 N. Y. 302, rev'g 125 App. Div. 538; 122 App. Div. 617; 47 Misc. 687; 47 Misc. 540.

For form of Stock Book, see Form No. 28.

§ 34. Annual report to secretary of state.—Every domestic stock corporation and every foreign stock corporation doing business within this state, except moneyed and railroad corporations, shall annually, during the month of January, or, if doing business without the United States, before the first day of May, make a report as of the first day of January, which will state:

1. The amount of its capital stock, and the proportion actually issued.

2. The amount of its debts or an amount which they do not exceed.

3. The amount of its assets or an amount which its assets at least equal.

4. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the code of civil procedure,* as a

* § 432, subd. 2, transferred to § 16, General Corporation Law.

person upon whom process against the corporation may be served within this state.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the secretary of state. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

Former § 30, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 30; L. 1892, Ch. 2, § 1; L. 1892, Ch. 688, § 30; L. 1897, Ch. 384, § 2; L. 1901, Ch. 354, § 1; L. 1905, Ch. 415, § 1.

Compare L. 1848, Ch. 37, § 12; L. 1848, Ch. 40, § 12; L. 1853, Ch. 117, § 112; L. 1853, Ch. 135, § 16; L. 1854, Ch. 232, § 24; L. 1857, Ch. 546, § 12; L. 1861, Ch. 147, § 9; L. 1875, Ch. 611, § 18; L. 1878, Ch. 203, § 44.

See § 665, Penal Law.

See 167 N. Y. 567; 165 N. Y. 1; 164 N. Y. 224; 158 N. Y. 607, 649, 728; 150 N. Y. 200, 559; 55 App. Div. 549; 33 Misc. 312, 619.

For form of Annual Report, see Form No. 29.

§ 35. Liability of officers for false certificates, reports or public notices.—If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so

becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

Former § 31, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 31; L. 1892, Ch. 688, § 31.

Compare L. 1848, Ch. 37, § 14; L. 1848, Ch. 40, § 15; L. 1853, Ch. 117, § 15; L. 1853, Ch. 135, § 17; L. 1854, Ch. 232, § 15; L. 1875, Ch. 611, § 21.

See § 665, Penal Law.

ARTICLE 4

Stock and Stockholders

- Section 50. Issue and transfers of stock.
51. Transfers of stock by stockholder indebted to corporation.
 52. Purchase of stock of other corporations.
 53. Subscriptions to stock.
 54. Time of payment of subscriptions to stock.
 55. Consideration for issue of stock and bonds.
 56. Liabilities of stockholders.
 57. Liabilities of stockholders to laborers, servants or employees.
 58. Non-liability in certain cases.
 59. Limitation of stockholder's liability.
 60. Partly paid stock.
 61. Preferred and common stock.
 62. Increase or reduction of capital stock.
 63. Notice of meeting to increase or reduce capital stock.
 64. Conduct of such meeting; certificate of increase or reduction.
 65. Change in par value of shares.
 66. Prohibited transfers to officers or stockholders.
 67. Application to court to order issue of new in place of lost certificate of stock.
 68. Order of court upon such application.
 69. Financial statement to stockholders.
 70. Liabilities of officers, directors and stockholders of foreign corporations.

§ 50. Issue and transfers of stock.—The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

Part of former § 40, Stock Corporation Law.

Derivation.—L. 1890, Ch. 546, § 40; L. 1892, Ch. 688, § 40; L. 1902, Ch. 601, § 1.

For form of Certificate of Common Stock, see Form No. 30.

§ 51. Transfers of stock by stockholder indebted to corporation.—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

Part of former § 26, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 26; L. 1892, Ch. 688, § 26.

Compare L. 1875, Ch. 611, § 12.

See 158 N. Y. 576.

§ 52. Purchase of stock of other corporations.—Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in

respect thereof, all the rights, powers and privileges of individual owners or holders of such stock.

Part of former § 40, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 40; L. 1892, Ch. 688, § 40; L. 1902, Ch. 601, § 1.

See 194 N. Y. 417; 125 App. Div. 804; 124 App. Div. 401.

§ 53. Subscriptions to stock.— If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

Former § 41, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 41; L. 1892, Ch. 688, § 41.

Compare L. 1850, Ch. 140, § 4; L. 1854, Ch. 232, § 11; L. 1867, Ch. 974, § 4; L. 1875, Ch. 611, § 5; L. 1878, Ch. 202, § 4; L. 1888, Ch. 462, § 3.

See 128 App. Div. 127; 123 App. Div. 23; 49 App. Div. 589.

§ 54. Time of payment of subscriptions to stock.— Subscriptions to the capital stock of a corporation shall be paid at such times and in such instalments as the board of directors may by resolution require. If default shall be made in the payment of any instalment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally, or by mail directed to him at his last known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of

failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such instalments as the receiver or the court may direct.

Former § 43, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 43; L. 1892, Ch. 688, § 43.

Compare L. 1811, Ch. 67, § 5; L. 1848, Ch. 37, § 6; L. 1848, Ch. 40, § 6; L. 1848, Ch. 259, § 12; L. 1850, Ch. 140, § 7; L. 1852, Ch. 228, § 4; L. 1853, Ch. 117, § 6; L. 1854, Ch. 232, § 6; L. 1857, Ch. 546, § 6; L. 1861, Ch. 149, § 6; L. 1867, Ch. 974, § 7; L. 1872, Ch. 820, § 4; L. 1874, Ch. 143, § 6; L. 1875, Ch. 606, § 11; L. 1875, Ch. 611, § 11; L. 1878, Ch. 203, § 8.

§ 55. Consideration for issue of stock and bonds.—No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all

statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

Former § 42, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 42; L. 1892, Ch. 688, § 42; L. 1901, Ch. 354, § 1.

Compare L. 1848, Ch. 40, § 14; L. 1853, Ch. 333, § 2; L. 1854, Ch. 232, § 11; L. 1857, Ch. 546, § 14; L. 1870, Ch. 773, § 2; L. 1875, Ch. 611, § 14.

See 147 N. Y. 597; 128 App. Div. 135; 45 App. Div. 241.

§ 56. Liabilities of stockholders.—Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law, excepting laws relating to moneyed corporations, and corporations and associations for banking purposes, on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law.

Part of former § 54, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 57; L. 1892, Ch. 688, § 54; L. 1901, Ch. 354, § 1.

See 194 N. Y. 165; 137 App. Div. 422.

§ 57. Liabilities of stockholders to laborers, servants or employees.—The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for

such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

Part of former § 54, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 57; L. 1892, Ch. 688, § 54; L. 1901, Ch. 354, § 1. See 134 App. Div. 811.

§ 58. Non-liability in certain cases.— No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

Part of former § 54, Stock Corporation Law.

Derivation.— L. 1890, Ch. 564, § 57; L. 1892, Ch. 688, § 54; L. 1901, Ch. 354, § 1.

Compare L. 1848, Ch. 37, §§ 10, 11, 15; L. 1848, Ch. 40, §§ 10, 11, 16, 18, 24; L. 1848, Ch. 259, § 2; L. 1848, Ch. 265, § 10; L. 1850, Ch. 140, §§ 10, 11; L. 1852, Ch. 228, §§ 5, 6, 7, 8, 9; L. 1853, Ch. 117, §§ 10, 11; L. 1853, Ch. 117, §§ 16, 18, 24; L. 1853, Ch. 135, § 14; L. 1854, Ch. 232, § 10; L. 1854, Ch. 232, §§ 12, 16, 18; L. 1857, Ch. 546, §§ 11, 16, 18; L. 1861, Ch. 149, § 2; L. 1867, Ch. 971, § 8; L. 1867, Ch. 974, §§ 10, 11; L. 1872, Ch. 248, § 3; L. 1872, Ch. 820, §§ 9, 10; L. 1874, Ch. 143, §§ 10, 13; L. 1874, Ch. 288, § 4; L. 1875, Ch. 606, §§ 12, 15; L. 1875, Ch. 611, §§ 23, 25; L. 1877, Ch. 228, § 3; L. 1878, Ch. 203, §§ 11, 12.

See 180 N. Y. 254; 155 N. Y. 145; 158 N. Y. 157; 45 App. Div.

241, 499; 48 App. Div. 12; 49 App. Div. 589; 88 App. Div. 401; 83 App. Div. 534; 118 App. Div. 605; 104 Supp. 166; 57 Misc. 172.

§ 59. Limitation of stockholder's liability.—No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

Former § 55, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 58; L. 1892, Ch. 688, § 55; L. 1909, Ch. 61, § 59.

Compare L. 1848, Ch. 37, § 17; L. 1848, Ch. 40, §§ 10, 24; L. 1848, Ch. 265, § 10; L. 1852, Ch. 228, § 8; L. 1853, Ch. 117, § 24; L. 1857, Ch. 546, § 20; L. 1875, Ch. 611, §§ 23, 25; L. 1877, Ch. 228, § 3.

See 194 N. Y. 165; 157 N. Y. 166; 155 N. Y. 145; 152 N. Y. 121; 145 N. Y. 84; 124 N. Y. 25; 89 N. Y. 334; 137 App. Div. 422; 134 App. Div. 811; 118 App. Div. 605; 113 App. Div. 782.

§ 60. Partly paid stock.—The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees

pursuant to sections fifty-seven, fifty-eight and fifty-nine of this chapter; and in any such case, the corporation may declare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

Former § 62, Stock Corporation Law.

Derivation.—L. 1901, Ch. 354, § 3.

For form of Certificate of Partly Paid Stock, see Form No. 31.

§ 61. Preferred and common stock.—Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and recorded; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby.

Former § 47, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 47; L. 1892, Ch. 688, § 47; L. 1901, Ch. 354, § 1.

Compare L. 1880, Ch. 225.

See 78 N. Y. 159; 124 App. Div. 266.

For form of Certificate of Preferred Stock, see Form No. 32.

For form of Notice of above Meeting, see Form No. 33.

For form of Certificate of Proceedings to Authorize Preferred Stock, see Form No. 34.

§ 62. Increase or reduction of capital stock.—Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

Former § 44, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 44; L. 1892, Ch. 688, § 44; L. 1894, Ch. 346; L. 1899, Ch. 696; L. 1901, Ch. 354, § 1.

Compare L. 1848, Ch. 37, § 20; L. 1848, Ch. 40, § 20; L. 1848, Ch. 265, § 8; L. 1852, Ch. 228, § 11; L. 1853, Ch. 117, § 20; L. 1853, Ch. 135, § 15; L. 1854, Ch. 232, § 19; L. 1867, Ch. 974, § 9; L. 1872, Ch. 248, § 7; L. 1872, Ch. 611, § 1; L. 1872, Ch. 829, § 13; L. 1873, Ch. 737, § 7; L. 1875, Ch. 606, § 14; L. 1875, Ch. 611, § 15; L. 1878, Ch. 203, § 10; L. 1878, Ch. 264, § 1.

A tax of one-twentieth of one per cent. must be paid upon the amount of the increase of capital stock. See § 180, Tax Law, *post*. See 146 N. Y. 46.

§ 63. Notice of meeting to increase or reduce capital stock.—Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of

the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

Former § 45, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 45; L. 1892, Ch. 688, § 45; L. 1893, Ch. 700, § 1; L. 1901, Ch. 354, § 1.

Compare L. 1848, Ch. 37, § 21; L. 1848, Ch. 40, § 21; L. 1848, Ch. 265, § 8; L. 1852, Ch. 228, § 13; L. 1853, Ch. 117, § 21; L. 1854, Ch. 232, § 20; L. 1866, Ch. 73, § 1; L. 1872, Ch. 248, § 7; L. 1872, Ch. 820, § 14; L. 1873, Ch. 737, § 7; L. 1875, Ch. 611, § 15; L. 1878, Ch. 264, § 2.

For form of Notice of above Meeting, see Form No. 35.

§ 64. Conduct of such meeting; certificate of increase or reduction.—If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceedings showing a compliance

with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the secretary of state. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders, as the case may be, shall have indorsed thereon the approval of the public service commission having jurisdiction thereof, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid, has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro

rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

Former § 46, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 46; L. 1892, Ch. 688, § 46; L. 1893, Ch. 700; L. 1901, Ch. 354; L. 1902, Ch. 286; L. 1904, Ch. 123, § 1.

Compare L. 1848, Ch. 37, § 22; L. 1848, Ch. 40, § 22; L. 1848, Ch. 265, § 8; L. 1852, Ch. 228, § 14; L. 1853, Ch. 117, § 22; L. 1854, Ch. 232, § 21; L. 1866, Ch. 73, § 2; L. 1872, Ch. 248, § 7; L. 1872, Ch. 820, § 15; L. 1873, Ch. 737, § 7; L. 1875, Ch. 611, § 15; L. 1878, Ch. 264, § 3.

For forms of Unanimous Consent, and Certificate of Vote or Consent to Increase or Reduce Capital Stock, see Forms Nos. 36 and 37.

For form of Affidavit of Custodian of Stock Book, see Form No. 25.

For form of Proof to Secure Approval of State Comptroller to Reduction, see Form No. 38.

§ 65. Change in par value of shares.—The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

Former § 56, Stock Corporation Law.

Derivation.—L. 1893, Ch. 196, § 1; L. 1901, Ch. 354, § 1.

Compare L. 1866, Ch. 73; L. 1884, Ch. 397.

For form of Certificate of Vote and Consent to Increase or Reduction of Number of Shares, see Form No. 39.

§ 66. Prohibited transfers to officers or stockholders.—No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money

of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business, and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valu-

able consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

Former § 48, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 48; L. 1892, Ch. 688, § 48; L. 1901, Ch. 354, § 1.

See 197 N. Y. 412; 192 N. Y. 189; 163 N. Y. 340; 162 N. Y. 268; 161 N. Y. 226, 539; 159 N. Y. 490; 145 N. Y. 441; 128 App. Div. 691; 118 App. Div. 281; 109 App. Div. 840; 94 App. Div. 117; 79 App. Div. 419; 56 App. Div. 43; 55 App. Div. 87; 45 App. Div. 579; 37 App. Div. 203; 68 Misc. 329; 66 Misc. 166.

§ 67. Application to court to order issue of new in place of lost certificate of stock.—The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on

the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

Former § 50, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 50; L. 1892, Ch. 688, § 50.

Compare L. 1873, Ch. 151, § 1.

See 148 N. Y. 441; 75 App. Div. 469; 69 App. Div. 149; 39 Misc. 356.

§ 68. Order of court upon such application.—Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, but in any application under the provisions of this chapter, in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this section excused from depositing se-

curity or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

Former § 51, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 51; L. 1892, Ch. 688, § 51; L. 1905, Ch. 35, § 1.

Compare L. 1873, Ch. 151, § 2.

See 39 Misc. 356.

§ 69. Financial statement to stockholders.—Stockholders owning five per centum of the capital stock of any corporation other than a moneyed corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of

ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

Former § 52, Stock Corporation Law.

Derivation.—L. 1890, Ch. 564, § 52; L. 1892, Ch. 688, § 52.

Compare L. 1854, Ch. 201; L. 1862, Ch. 472.

See 71 App. Div. 391; 43 Hun, 188; 9 Misc. 372.

§ 70. **Liabilities of officers, directors and stockholders of foreign corporations.**—Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. Unlawful loans to stockholders;
3. Making false certificates, reports or public notices;
4. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
5. The failure to file an annual report.

Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations.

Former § 60, Stock Corporation Law, altered.

Derivation.—L. 1897, Ch. 384, § 4.

See §§ 28, 29, 34, 35 and 66, Stock Corporation Law, *ante*; see also §§ 15 and 16, General Corporation Law, *ante*.

ARTICLE 5

Laws Repealed; When to Take Effect

Section 80. Laws repealed.

81. When to take effect.

§ 80. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 81. **When to take effect.**—This chapter shall take effect immediately.*

Schedule of Laws Repealed

Laws of	Chapter	Section
1814.....	12.....	All (38th Sess.)
1825.....	325.....	1-3, 12
1828.....	20.....	15, ¶¶ 17, 18 (2d Meet.)
1828.....	21.....	1, ¶ 180 (2d Meet.)
1830.....	71.....	All
1848.....	145.....	All
1853.....	176.....	All
1853.....	425.....	All
1853.....	460.....	All
1869.....	742.....	7
1875.....	392.....	8
1884.....	434.....	All
1889.....	57.....	All
1890.....	564.....	All
1892.....	337.....	All
1892.....	688.....	All
1893.....	196.....	All
1893.....	638.....	All
1893.....	700.....	All
1894.....	346.....	All
1896.....	929.....	All
1896.....	932.....	1, pt. adding § 58 to L. 1892, Ch. 688.

* Became a law February 17, 1909.

Laws of	Chapter	Section
1897.....	384.....	All
1899.....	354.....	All
1899.....	696.....	All
1900.....	128.....	All
1900.....	164.....	All
1900.....	476.....	All
1901.....	130.....	All
1901.....	354.....	All
1902.....	80.....	All
1902.....	98.....	All
1902.....	286.....	All
1902.....	601.....	All
1903.....	320.....	All
1904.....	123.....	All
1904.....	307.....	All
1904.....	706.....	All
1905.....	35.....	All
1905.....	415.....	All
1905.....	489.....	All
1905.....	745.....	All
1905.....	750.....	All
1905.....	751.....	All
1906.....	238.....	All

**MISCELLANEOUS PROVISIONS AFFECTING
CORPORATIONS**

[191]

TAX LAW PROVISIONS

Laws of 1909, Chapter 62, constituting Chapter Sixty of the Consolidated Laws.

LOCAL TAXATION

ARTICLE 1

Taxable Property and Place of Taxation

§ 1. Short title.—This chapter shall be known as the “Tax Law.”

§ 2. Definitions.—1. “Tax district” as used in this chapter, means a political subdivision of the state having a board of assessors authorized to assess property therein for state and county taxes. * * * *

3. The terms “land,” “real estate,” and “real property,” as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, crantage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted

Only such portions of the Tax Law as pertain to corporations are given.

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or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways or public places, any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

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5. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to tax-

ation on their capital, as shall not be invested in real estate.

§ 3. Property liable to taxation.—All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.

See 102 N. Y. 176; 54 App. Div. 217; 32 Misc. 84.

§ 4. Exemption from taxation.—The following property shall be exempt from taxation: * * *

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a non-resident of this state and consigned to his agent in this state for sale on commission for the benefit of the owner; moneys of a non-resident of this state, under the control or in the possession of his agent in this state, when transmitted to such agent for the purpose of investment or otherwise.

* * * * *

16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

§ 6. No deduction allowed for indebtedness fraudulently contracted.—No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted or incurred in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

§ 7. When property of non-residents is taxable.—

1. Non-residents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property,

at the place where such business is carried on, to the same extent as if they were residents of the state.

2. The personal property of non-residents of the state having an actual situs in the state, and not forming a part of capital invested in business in the state, shall be assessed in the name of the owner thereof for the purpose of identification and taxed in the tax district where such property is situated, unless exempt by law. This subdivision shall not apply to money, or negotiable collateral securities, deposited by, or debts owing to, such non-residents nor shall it be construed as in any manner modifying or changing the law imposing a tax on real estate mortgage securities.

See 141 N. Y. 118; 147 N. Y. 31; 157 N. Y. 159; 49 App. Div. 108; 32 Misc. 61.

§ 9. Place of taxation of real property.— Real property shall be assessed in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it.

Amended by L. 1911, Chapter 315, § 1, in effect October 1, 1911.

§ 10. Taxation of real property divided by line of tax district.— If a farm or lot is divided by a line between two or more tax districts it shall be assessed in the tax district in which the dwelling-house or other principal buildings are located, in the manner provided by section nine of this chapter, the same as though such farm or lot was wholly in such tax district, except that if the land is unoccupied or has not buildings thereupon, the portion of such farm, lot or tract of land lying in each district shall be separately assessed therein. If such land is situated in two or more counties and is wild and uncultivated and not occupied and used for agricultural purposes, the portions of such land lying in each county shall be separately assessed therein. If the boundary line of a tax district passes through a building, any portion of which is used as a dwelling, the owner of such building, if occupying the same or residing in either tax district, and otherwise, the person occupying such building as a dwelling-house, may elect in which district such building and the adjacent land, owned, occupied and connected therewith shall be assessed, by serving a written notice of such election on the assessors of each tax district during the month of May; but if such election is not made the property shall be assessed in the tax districts in which it is located.

§ 11. **Place of taxation of property of corporations.**—The real estate of all incorporated companies liable to taxation shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of a toll bridge, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

§ 12. **Taxation of corporate stock.**—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

See 126 N. Y. 433; 146 N. Y. 304; 156 N. Y. 417.

ARTICLE 2

Mode of Assessment

§ 20. **Ascertaining facts for assessment.**—The assessors in each tax district shall annually between May first and July first ascertain by diligent inquiry all the property and the names of all the persons taxable therein, except that in towns containing an incorporated village having a population of more than ten thousand inhabitants, according to the last state census, the assessors may have from April fifteenth until July first to ascertain the taxable property and names of persons taxable in such towns, and except that in towns containing an incorporated city having a population of more than ten thousand inhabitants, according to the last state census, where said city so situated shall

have its own separate board of assessors, the town assessors may have from May first to July first to ascertain the taxable property and names of persons taxable in such towns. The comptroller shall on or about May fifteenth in each year transmit to the assessors of each tax district a statement of all lands owned by the state in such district, and such statement shall be used by the assessors in making up their assessment-rolls and shall be considered by them as their authority to assess to the state such of the lands described thereon as are legally subject to taxation.

Amended by L. 1911, Chapter 116; L. 1911, Chapter 805, in effect July 28, 1911.

§ 21. Preparation of assessment-roll.— They shall prepare an assessment-roll in three parts.

Part one shall contain the assessment of real property exclusive of special franchises; part two shall contain the assessment of personal property; part three shall contain the assessment of special franchises.

Part one shall contain seven columns, in which, according to the best information in their power, they shall set down:

1. In the first column, the name of the owner or the last known owner or reputed owner of each parcel or portion of real property separately assessed. Such name shall be regarded as an aid to identify such parcel or portion. A mistake in the name of the owner, or the last owner, or reputed owner, shall not affect the validity of the assessment against the parcel or portion.

2. In the second column, a description of such parcel or portion of real property separately assessed, sufficiently accurate to identify the same. As soon as a tax map of the district shall be prepared and adopted by the assessors, the number or numbers of such parcel or portion on the tax map shall be entered and shall be deemed a sufficient description thereof.

3. In the third column, a statement of the approximate quantity of the square feet, square rods or acres contained in such parcel or portion.

4. In the fourth column, the full value of such parcel or portion of real property.

5. In the fifth column, the full value of such parcel or portion if the same is included within an incorporated village and the name of the village.

6. In the sixth column there shall be entered by the proper official the amount of the tax levied against such parcel or portion of real property.

7. In the seventh column, there shall be entered by the proper official the date of the payment of such tax.

Part two shall contain seven columns, in which, according to the best information in their power, they shall set down:

1. In the first column, the names of all persons and corporations in the tax district, taxable on personal property.

2. In the second column, the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

3. In the third column, the value of taxable rents reserved and chargeable upon lands within the tax district estimated at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents, and if payable in anything except money, the value of the rents in money to be ascertained by them and the value of each rent assessed separately.

4. In the fourth column, the full value of the capital stock of each corporation assessed pursuant to the provisions of section twelve of this chapter.

5. In the fifth column, the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him when such person resides in an incorporated village and the name of the village, and the full value of the capital stock of each corporation, assessed pursuant to the provisions of section twelve of this chapter, when such corporation has its principal office in an incorporated village and the name of the village.

6. In the sixth column, there shall be entered by the proper official the amount of the tax levied against such person or corporation named.

7. In the seventh column, there shall be entered by the proper official the date of the payment of such tax.

Part three shall contain six columns in which there shall be set down:

1. In the first column, the names of each corporation, association, copartnership or person taxable on a special franchise.

2. In the second column, a description of the special franchise in such form as the state board of tax commissioners shall prescribe.

3. In the third column, the value of the special franchise as fixed by the state board of tax commissioners.

4. In the fourth column, such part of the value of the special franchise as fixed by the state board of tax commissioners and which shall have been apportioned to an

incorporated village in the manner provided in this chapter and the name of the village.

5. In the fifth column, there shall be entered by the proper official the amount of the tax levied against the corporation, association, copartnership or person named.

6. In the sixth column, there shall be entered by the proper official the date of the payment of such tax.

Amended by L. 1911, Chapter 315, in effect October 1, 1911.

§ 27. Reports of corporations.—The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

§ 28. Penalty for omission to make statement.—In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not wilful, may, in his discretion, discontinue such suit.

See 9 State Rep. 469.

STATE TAXATION

ARTICLE 9

Corporation Tax

- Section 180. Organization tax.
181. License tax on foreign corporations.
182. Franchise tax on corporations.
183. Certain corporations exempt from tax on capital stock.
184. Additional franchise tax on transportation and transmission corporations and associations.*
185. Franchise tax on elevated railroads or surface railroads not operated by steam.*
186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.*
187. Franchise tax on insurance corporations.* *
188. Franchise tax on trust companies.*
189. Franchise tax on savings banks.*
190. Purchase of state bonds; credit to be given.*
191. Tax upon foreign bankers.*
192. Report of corporations.
193. Value of stock to be appraised.
194. Further requirements as to reports of corporations.
195. Powers of comptroller to examine into affairs of corporations.
196. Notice of statement of tax; interest.
197. Payment of tax and penalty of failure.
198. Revision and readjustment of accounts by comptroller.
199. Review of determination of comptroller by certiorari.
200. Regulations as to such writ of certiorari.
201. Warrant for the collection of taxes.
202. Information of delinquents.
203. Action for recovery of taxes; forfeiture of charter of delinquent corporation.
204. Reports to be made by the secretary of state.
205. Exemptions from other state taxation.
206. Application of taxes.
207. Limitation of time.

§ 180. Organization tax.—Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one-twentieth of one per centum upon the amount of capital stock which the corporation

* Omitted in this book.

is authorized to have, and a like tax upon any subsequent increase. Provided, that in no case shall such tax be less than five dollars.* Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. And in case of a decrease of capital stock, upon which the tax required by law has been paid, and a subsequent increase thereof, a tax shall be paid only upon so much of such increase as exceeds the amount of capital stock upon which a tax has been before paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and cooperative associations. A railroad corporation need not pay such tax at the time of filing its certificate of incorporation, but shall pay the same before the public service commission shall grant a certificate, as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the public service commission until it is furnished with a receipt for such tax from the state treasurer. If the board of railroad commissioners or public service commission shall have heretofore granted, or the public service commission shall hereafter grant, such certificate and upon an appeal from the determination of such board of railroad commissioners or public service commission, such certificate has been or

* Formerly one dollar.

may hereafter be denied the comptroller shall refund the amount of tax so paid to the railroad corporation or corporations by which such tax was paid, upon proof of payment being presented and appropriation being made therefor.

Amended by L. 1910, Ch. 472; L. 1911, Ch. 91, in effect April 29, 1911.

§ 181. **License tax on foreign corporations.**— Every foreign corporation, except banking corporations, fire, marine, casualty and life insurance companies, co-operative fraternal insurance companies, and building and loan associations, authorized to do business under the general corporation law, shall pay to the state treasurer, for the use of the state, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed, upon the basis of the capital stock employed by it within this state, during the first year of carrying on its business in this state; and if any year thereafter any such corporation shall employ an increased amount of its capital stock within this state, the same license fee shall be due and payable upon any such increase. The measure of the amount of capital stock employed in this state shall be such a portion of the issued capital stock as the gross assets employed in any business within this state bear to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located. The amount of capital upon which such taxes shall be paid shall be fixed by the comptroller, who shall have the same authority to examine the books and records in this state of such foreign corporations, and the employees thereof, and the same power to issue his warrant for the collection of such taxes, as he now has with regard to domestic corporations. No action shall be maintained or recovery

had in any of the courts in this state by such foreign corporation after thirteen months from the time of beginning such business within the state, without obtaining a receipt from the comptroller for the payment of the license fee upon the capital stock employed by it within this state during the first year of carrying on its business in this state.

Amended by L. 1910, Ch. 340.

§ 182. Franchise tax on corporations.— For the privilege of doing business or exercising its corporate franchises in this state every corporation, joint-stock company or association, doing business in this state, shall pay to the state treasurer annually, in advance, an annual tax to be computed upon the basis of the amount of its capital stock, employed during the preceding year within this state, and upon each dollar of such amount. The measure of the amount of capital stock employed in this state shall be such a portion of the issued capital stock as the gross assets employed in any business within this state bear to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located. If the dividends upon the capital stock amount to six, or more than six per centum upon the par value of the capital stock, during any year ending with the thirty-first day of October, the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the par value of the capital stock during said year. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets do not exceed the liabilities, exclusive of capital stock, or

(2) The average price at which such stock sold during said year, did not equal or exceed its par value, or

(3) If no dividend was declared,

Then each dollar of the amount of capital stock employed in this state, determined as hereinbefore provided,

shall be taxed at the rate of three-fourths of one mill. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets exceed the liabilities, exclusive of capital stock, by an amount equal to or greater than the par value of the capital stock, or

(2) The average price at which such stock sold during said year is equal to or greater than the par value,

Then the amount of capital stock, determined as hereinbefore provided to be employed in this state, shall be taxed at the rate of one and one-half mills on each dollar of the valuation of the capital stock employed in this state, but such valuation shall not be less than

(1) The par value of such stock,

(2) The difference between the assets and liabilities, exclusive of capital stock,

(3) The average price at which such stock sold during said year.

If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon, amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged upon the capital stock

(1) Upon which no dividend was made or declared, or

(2) Upon which the dividend or dividends made or declared did not amount to six per centum on the par value,

At the rate as hereinbefore provided for the taxation of capital stock upon which no dividend was made or declared, or upon which the dividend or dividends made

or declared did not amount to six per centum on the par value.

All corporations not taxable under the preceding paragraphs of this section shall be taxed in an amount not less than would be produced by an assessment of one and one-half mills on each one dollar of the actual value of its capital stock, determined to be employed in this state as hereinbefore provided, or one and one-half mills upon each dollar of such capital stock at the average price at which said stock sold during the said year.

See 129 N. Y. 558; 105 N. Y. 76; 131 N. Y. 64; 91 Hun, 158; 148 N. Y. 690; 150 N. Y. 46; 152 N. Y. 59; 154 N. Y. 1, 101; 156 N. Y. 585; 157 N. Y. 70; 159 N. Y. 70; 49 App. Div. 108; 55 App. Div. 265; 47 App. Div. 126.

§ 183. Certain corporations exempt from tax on capital stock.— Banks, savings banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this state, and any company authorized to do a trust company business, solely or in connection with any other business, under a general or special law of this state, laundering corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations owning or operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundering, manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in prop-

erty in this state and used by it in its laundering, manufacturing or mining business in this state.

See 158 N. Y. 162, 168, 155, N. Y. 1, 408; 145 N. Y. 587; 144 N. Y. 160; 129 N. Y. 543; 92 N. Y. 487.

Sections 184-191, inclusive, are omitted, for the reason that they do not apply to business corporations.

§ 192. Reports of corporations.—Corporations liable to pay a tax under this article shall report as follows:

1. Corporations paying a franchise tax. Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. Transportation and transmission corporations. Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. Elevated and surface railroad corporations. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every

nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. Water-works, gas, electric, steam-heating, lighting and power corporations. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

* * * * *

Subdivisions 5-7, inclusive, relate to insurance corporations, foreign bankers, trust companies and savings banks, respectively.

§ 193. Value of stock to be appraised.— If the dividend or dividends amount to less than six per centum on the par value of the capital stock, or no dividend is declared, the president, treasurer or secretary of the company, liable to pay a tax under the provisions of section one hundred and eighty-two of this chapter, shall, under oath, between the first and fifteenth days of November in each year, estimate and appraise the capital stock of such company at its actual value.

And shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the state.

§ 194. Further requirements as to reports of corporations:— Every report required by this article shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the

same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

See 148 N. Y. 690.

§ 195. Powers of comptroller to examine into affairs of corporations.—In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined, in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an ac-

count for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

See L. 1896, c. 908.

§ 196. Notice of statement of tax; interest.— Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

§ 197. Payment of tax and penalty for failure.— A tax imposed by section one hundred and eighty-two or one hundred and eighty-six of this chapter shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven of this chapter on an insurance corporation shall be due and payable into the state treasury on or before the first day of June in each year. A tax imposed by section one hundred and eighty-eight or one hundred and eighty-nine shall be due and payable into the state treasury on or before the first day of September in each year. A tax imposed by section one hundred and ninety-one of this chapter on a

foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the state treasury, in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint-stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

§ 198. **Revision and readjustment of accounts by comptroller.**—If an application be filed with the comptroller by the party against whom the account is stated or by the attorney-general within one year from the time any such account shall have been audited and stated, the comptroller may at any time, upon notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account, and if it shall be made to appear upon any such application, by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as

the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. Such credit, whether allowed before or after the passage of this chapter may be, by the person, partnership, company, association or corporation in whose favor it is allowed, assigned to a person, partnership, company, association or corporation liable to pay taxes under article nine of this chapter, and the assignee of the whole or any part of such credit on filing with the comptroller such assignment shall thereupon be entitled to credit on the books of the comptroller for the amount thereof on the current account for taxes of such assignee in the same way and with the same effect as though the credit had originally been allowed in favor of such assignee. The comptroller shall forthwith send written notice of his determination upon such application to the applicant, and to the attorney-general, which notice may be sent by mail to his post-office address.

§ 199. Review of determination of comptroller by certiorari.—The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the state. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such

review, an appeal to the court of appeals may be taken by either party.

§ 200. Regulations as to such writ of certiorari.—No certiorari to review any audit and statement of an account of any determination by the comptroller under this article shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges audited and stated in such account must be deposited with the state treasurer before making the application and an undertaking filed with the comptroller, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him or it in the prosecution of the writ, including costs of all appeals.

See 33 Misc. 569.

§ 201. Warrant for the collection of taxes.—After the expiration of thirty days from the sending by the comptroller of a notice of a statement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the state treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof,

by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

§ 202. Information of delinquents.—It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, or any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

§ 203. Action for recovery of taxes; forfeiture of charter of delinquent corporation.—An action may be brought

by the attorney-general, at the instance of the comptroller, in the name of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

§ 204. Reports to be made by the secretary of state.—The secretary of state shall transmit on the first day of each month to the comptroller a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this state, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the state. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

§ 205. Exemptions from other state taxation.—The personal property of every corporation, company, associ-

ation or partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, if all taxes due and payable under this article have been paid thereby. The personal property of every corporation taxable under section one hundred and eighty-eight of this article, other than for an organization tax, and as provided in the banking law, shall be exempt from assessment and taxation for all other purposes. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this chapter shall not be taxed as an individual for such stock. Personal property exempted from taxation by this section shall not include shares of stock of banks and banking associations taxable under the provisions of section twenty-four of this chapter.

§ 206. Application of taxes.—The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

§ 207. Limitation of time.—The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the corporation tax law.

See §§ 290–307, inclusive, relating to procedure on review of erroneous assessments, refunds and proceedings to collect taxes.

ARTICLE 12

Tax on Transfers of Stock***SECTION 270. Amount of tax.**

- 271. Stamps how prepared and sold.
- 271a. Sale of stamps.
- 272. Penalty for failure to pay tax.
- 273. Cancelling stamps; penalty for failure.
- 274. Contracts for dies; expenses how paid.
- 275. Illegal use of stamps; penalty.
- 276. Power of state comptroller.
- 277. Civil penalty; how recovered.
- 278. Effect of failure to pay tax.
- 279. Application of taxes.
- 280. Refund of tax erroneously paid.

§ 270. **Amount of tax.**— There is hereby imposed and there shall immediately accrue and be collected a tax, as herein provided, on all sales, or agreements to sell, or memoranda of sales of stock, and upon any and all deliveries or transfers of shares or certificates of stock, in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock or merely with the possession or use thereof for any purpose, or to secure the future payment of money, or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold,

* See Rules of State Comptroller's Office, *post*.

nor upon such stock certificates so deposited; nor upon mere loans of stock or the return thereof. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of sale, or transfer, where the evidence of the transaction is shown only by the books of the association, company or corporation, the stamp shall be placed upon such books; and where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers, and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale.

Re-enacted by L. 1910, Ch. 38; amended by L. 1911, Ch. 352, in effect June 15, 1911.

See note to § 280, *post*.

Where a voting trustee of a corporation issues trust certificates for stock to the stockholder of another company, the assets of which such corporation has purchased, entitling him to participate in the benefits represented by the certificates, securing the future payment of money, dividends or profits, or the future transfer of any stock, there is a delivery or transfer of shares or certificates of stock within the meaning of § 270. *United States Radiator Corporation v. The State of New York* (decision of Court of Claims reported in *New York Law Journal*, February 24, 1911).

§ 271. Stamps how prepared and sold.—Adhesive stamps for the purpose of paying the state tax provided for by this article shall be prepared by the state comptroller, in such form, and of such denominations and in such quantities as he may from time to time prescribe,

and shall be sold by him to the person or persons desiring to purchase the same; he shall make provision for the sale of such stamps in such places and at such times as in his judgment he may deem necessary.

§ 271a. Sale of stamps.—No person, firm, company, association or corporation other than a corporation organized under the banking law of this state or under the national bank act of the United States, or a duly authorized agent of the comptroller, shall sell or expose for sale any stamp issued pursuant to this article, without first obtaining from the comptroller his written consent, except that in connection with a sale of or agreement to sell stock a broker or agent of the principal making such sale or agreement to sell may supply and affix the stamp or stamps required by this article. No person shall sell any stamp for a sum less than the face value thereof without the written consent of the comptroller. Any person violating any provision of this section shall be guilty of a misdemeanor.

Added by L. 1911, Ch. 12, in effect March 9, 1911.

§ 272. Penalty for failure to pay tax.—Any person or persons liable to pay the tax by this article imposed, or any one who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer or delivery without paying the tax by this article imposed, or any person who shall in pursuance of any sale, transfer, or agreement, deliver any stock, or evidence of the sale or transfer of or agreement to sell any stock or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company or corporation without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be

imprisoned for not more than six months, or both such fine and imprisonment, at the discretion of the court.

Amended by L. 1911, Ch. 352, in effect June 15, 1911.

§ 273. **Cancelling stamps; penalty for failure.**—In every case where an adhesive stamp shall be used to denote the payment of the tax provided by this article, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person makes use of an adhesive stamp to denote the payment of the tax imposed by this article, without so effectually cancelling the same; such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, in the discretion of the court.

Amended by L. 1911, Ch. 352, in effect June 15, 1911.

§ 274. **Contracts for dies; expenses how paid.** The state comptroller is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such state tax stamps, and all expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the state treasurer from any moneys appropriated for such purpose.

§ 275. **Illegal use of stamps; penalty.**— Any person who shall willfully remove or alter or knowingly permit to be removed or altered the cancelling or defacing marks of any stamp provided for by this article with intent to use such stamp, or who shall knowingly or willfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this article, except as hereinafter provided, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than one year, or by both such fine and imprisonment, at the discretion of the court. If any such stamp shall be affixed to any memorandum of sale with the intention of paying a tax, but delivery pursuant to such sale shall not be made in conformity with the memorandum thereof, then such stamp may be removed from such memorandum and subsequently used on some other memorandum of sale, provided that when so used there shall be attached to the memorandum, to which said stamp shall be so affixed, a written statement signed by the vendor or the agent making such sale, setting forth in detail the facts justifying such re-use.

Amended by L. 1911, Ch. 12, in effect March 9, 1911.

§ 276. **Power of state comptroller.**— Every person or firm, a part of whose regular or ordinary business is the making of sales, agreements to sell, deliveries, or transfers, of shares or certificates of stock, or conducting or transacting a brokerage business, and every company, association or corporation making a sale, agreement to sell, delivery or transfer of shares or certificates of stock, or conducting or transacting a brokerage business, shall keep or cause to be kept a just and true book of account, wherein shall be plainly and legibly recorded the date of making every sale, agreement to sell, delivery, or trans-

fer, of shares or certificates of stock, and every transaction in relation to any stock, the number of shares, the total amount covered by each such sale, agreement to sell, delivery, transfer or transaction, and the name of the other party thereto; and such book shall at all times be subject to the inspection of the comptroller, or any of his representatives, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except on Saturdays, Sundays, and legal holidays. The state comptroller may, at any time after sales or transfers of stock which by the provisions of this article are subject to a tax, inquire into and ascertain whether the tax thereby imposed has been paid. For the purpose of ascertaining such fact the comptroller shall have the right and it shall be his duty to examine such book of account of any person, firm, company, association or corporation required to keep the same, and the bills or memoranda of sale or transfer of shares or certificates of stock; and such bills or memoranda of sale or transfer shall remain accessible for such examination for six months from their respective dates. Every association, company or corporation shall keep or cause to be kept a transfer ledger, register or stock certificate book, containing a complete and true entry and record of all sales or transfers of shares or certificates of its stock made upon its books. It shall also retain and keep all surrendered or canceled shares or certificates of its stock and all memoranda relating to the sale or transfer of any thereof; and all such transfer ledgers, registers or stock certificate books and surrendered or canceled shares or certificates of stock and memoranda relating to the sale or transfer of its stock, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays and legal holidays, be open to examination by the comptroller. The state comptroller may enforce his right to examine such books of account and bills or memoranda of sale or transfer and such transfer ledger, register and stock certificate books and surren-

dered or canceled shares or certificates of stock by mandamus. If the comptroller ascertains that the tax provided for in this article has not been paid, he shall bring an action in his name as such comptroller, in any court of competent jurisdiction, for the recovery of such tax and for any penalty incurred by any person under the provisions of this article. Every person, firm, company, association or corporation who shall fail to keep such book of account, or bills or memoranda of sale or transfer, or transfer ledger, register or stock certificate book or surrendered or canceled shares or certificates of stock as herein required, or who shall refuse to permit the comptroller or any of his representatives to examine any of said books, records or papers, at any time, as above provided, or who shall in any other respect violate any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than five hundred dollars nor more than five thousand dollars, or be imprisoned not less than three months nor more than two years, or both, in the discretion of the court.

Amended by L. 1910, Ch. 453; L. 1911, Ch. 352, in effect June 15, 1911.

§ 277. Civil penalty; how recovered.—Any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the state a civil penalty of five hundred dollars for each violation. The state comptroller shall bring an action in his name as such comptroller in any court of competent jurisdiction for the recovery of any civil penalty and all moneys collected by him shall be paid into the state treasury.

§ 278. Effect of failure to pay tax.—No transfer of stock made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax

is not paid at the time of such transfer, shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court in this state.

§ 279. Application of taxes. The taxes imposed under this article and the revenues thereof shall be paid by the state comptroller into the state treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon.

§ 280. Refund of tax erroneously paid.— If any stamp or stamps shall have been erroneously affixed to any book, certificate of stock, or bill or memorandum of sale, the comptroller may, upon presentation of a claim for the amount of such stamp or stamps and upon the production of evidence satisfactory to him that such stamp or stamps was or were so erroneously affixed so as to cause loss to the person or persons making such claim, pay such amount, or such part thereof as he may allow, to such claimant out of any moneys appropriated for that purpose. Such claims shall be presented to the comptroller in writing, duly verified, and shall state the full name and address of the claimant, the date of such erroneous affixing, the face value of such stamp or stamps and shall describe the instrument to which the stamp or stamps were affixed and contain such evidence as may be available upon which the demand for such refund is based. Such claims shall be presented within ninety days after such erroneous affixing unless such affixing shall have taken place prior to the date on which this act shall take effect, in which case such claim shall be presented within ninety days after the date on which this act shall take effect. If the comptroller rejects a claim or any part thereof, the claimant may file a claim for the recovery of such sum as the comptroller shall have refused to allow, with the court of claims, which shall constitute a private claim against the state and shall be subject to all the provisions of law governing

such claims, except that all claims so presented shall be filed with the court of claims within ninety days from the date on which such claim shall be rejected by the comptroller. For the purposes of this section, the comptroller's decision shall be deemed to have been made at the time of the depositing of a copy of such decision in the post-office inclosed in a duly post-paid wrapper and directed to the person making such claim at the address contained in the verified claim presented to the comptroller as hereinbefore provided.

Added by L. 1910, Ch. 186, in effect April 29, 1910.

RULINGS OF STATE COMPTROLLER'S OFFICE

GOVERNING THE COLLECTION OF

TAXES ON STOCK TRANSFERS

For the information of the public the following is a brief statement of the more general rules and regulations governing the imposition and collection of stock transfer taxes, prepared pursuant to the rulings made by the Attorney-General.

1. The application and scope of the statute imposing this tax was considerably broadened by the amendment thereto, effected by chapter 352 of the Laws of 1911, with the result that the rulings heretofore made asserting exemptions from the tax are as a rule not controlling.

2. By the statute as amended, a tax is imposed upon all sales or agreements to sell and upon all deliveries or transfers of shares or certificates of stock, of any and all associations, companies and corporations, whether domestic or foreign, at the rate of two cents on each hundred dollars of face value or fraction thereof.

3. The statute does not apply to the original issue of stock; but all sales or transfers made subsequent thereto, whether intermediate or final, are taxable.

4. It is not necessary to render it taxable that the transaction involve a sale. By the statute as amended, a tax is imposed upon all sales or transfers of shares or certificates of stock, whether operating to convey the beneficial interest in or merely the legal title to said stock, or possession thereof for any purpose. The only exceptions to this rule are those expressly provided for in section 270 of the law.

5. A transfer of voting trust certificates constitutes a transfer of shares of stock within the meaning of the

statute and is taxable, as well as the transfer of stock from stockholders to voting trustees.

6. The mere surrender of a certificate of stock for re-issue in smaller denomination is not taxable; but if re-issued in part to the original owner and in part to a third party it is taxable to the extent of the transfer to the third party.

7. Likewise the mere surrender of a certificate of stock held by a deceased person for issuance in the name of his executor or administrator is not taxable; but all transfers made by the latter, whether to trustees, legatees or other persons are taxable.

8. The law applies to the stock of foreign as well as domestic corporations and to residents and nonresidents alike.

9. While the law has no extra territorial operation, nevertheless, where it appears that the transfer of the stock on the corporate books within this State constitutes an essential step to render the transfer effectual, it subjects it to a tax although in all other respects made without the State.

10. Where the sale or transfer is shown only by the books of the company the stamps must be placed upon such books, and where it is effected by the delivery or transfer of a certificate the stamp must be placed upon the surrendered certificate. In case of an agreement to sell, or where the sale is effected by the delivery of the certificate assigned in blank, there must be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamps shall be affixed. This bill or memorandum with stamp attached must be affixed to the certificate when presented for transfer.

A strict compliance with these requirements will be insisted upon.

11. Every such bill or memorandum of sale, agreement to sell or sales ticket must show the date thereof, the name of the seller, the amount of the sale and the matter or thing to which it refers, and all such memorandum

of sale or sales ticket not used for the purpose of transfer must be kept by the broker for six months from their respective dates.

12. All persons liable for the payment of the tax and all persons acting as agents or brokers for any such person, who in any manner assist in consummating a sale or transfer without paying the required tax are guilty of a misdemeanor and liable to severe penalties.

13. Likewise persons acting as transfer agents are forbidden by the statute to transfer stock on the books of the company until the required tax has been paid; and for a failure to perform this duty they are guilty of a misdemeanor and liable to severe penalties.

14. Every stamp used to denote the payment of the tax must be canceled by the user by writing or stamping thereon the initials of his name and the date upon which the stamp is attached or used. He must also cut or perforate the stamp in a substantial manner so that it cannot again be used. A failure so to do renders the party guilty of a misdemeanor and liable to severe penalties.

15. Every broker and every corporation making a sale of shares or certificates of stock is required to keep a just and true book of account setting forth the date of the sale or transfer, and every transaction relating thereto, including the number of shares involved, the total amount covered thereby, and the name of the party to whom the sale or transfer is made. This book shall at all times between the hours of 10 a. m. and 3 p. m. (Saturday, Sunday and legal holidays excepted) be subject to examination by the Comptroller or any of his representatives. A failure to comply with these provisions will subject the offender to severe penalties.

16. Every company is required to keep a transfer register, ledger or stock certificate book containing a full and true record of all sales or transfers of its stock. It is also required to retain and keep all surrendered and canceled shares or certificates of stock and all memo-

randa relating thereto, all of which are subject to examination by the Comptroller or any of his representatives between the hours of 10 a. m. and 3 p. m. (Saturdays, Sundays and legal holidays excepted). A failure to comply with this provision will subject the offender to severe penalties.

17. Severe penalties, civil and criminal, are provided by the act for the illegal sale or use of stamps, for the failure to pay the tax imposed and for violation of the other provisions thereof.

18. Furthermore, the failure to pay the tax constitutes an absolute defense to an action brought to recover the purchase price of the stock.

Stock transfer tax stamps are of the following denominations: Two, ten, twenty and fifty cents, \$1, \$2, \$10 and \$20, and are for sale by Empire Trust Co., 42 Broadway, New York City; National Commercial Bank, Albany; Utica Trust & Deposit Co., Utica; The Syracuse Trust Co., Syracuse; Rochester Trust & Safe Deposit Co., Rochester; The Peoples Bank of Buffalo, Buffalo; Chemung Canal Trust Co., Elmira; The Northern New York Trust Company, Watertown; Broome County Trust Company, Binghamton; Bank of Jamestown, Jamestown, New York.

CODE OF CIVIL PROCEDURE PROVISIONS

County Courts.

§ 341. Domestic corporation, when deemed resident.—For the purpose of determining the jurisdiction of a county court, in either of the cases specified in the last section, a domestic corporation or joint stock association, whose principal place of business is established, by or pursuant to a statute, or by its articles of association, or whose principal place of business or any part of its plant or plants, shops, factories or offices is actually located within the county, or in case of a railroad corporation where any portion of the road operated by it is within the county, it is deemed a resident of the county; and personal service of a summons, made within the county, as prescribed in this act, or personal service of a mandate, whereby a special proceeding is commenced, made within the county, as prescribed in this act for personal service of a summons, is sufficient service thereof upon a domestic corporation wherever it is located.

Amended by L. 1911, Ch. 68, in effect September 1, 1911.

§ 399. Attempt to commence action in a court of record.—An attempt to commence an action, in a court of record, is equivalent to the commencement thereof against each defendant, within the meaning of each provision of this act, which limits the time for commencing an action, when the summons is delivered, with the intent that it shall be actually served, to the sheriff, or, where the sheriff is a party, to a coroner of the county, in which that defendant or one of two or more co-defendants, who are joint contractors, or otherwise united in interest with him, resides or last resided; or, if the defendant is a corporation, to a like officer of the county, in which it is established by law, or wherein its general business is or was last transacted, or wherein it keeps or last kept, an office for the transaction of business. But in order to entitle a plaintiff to the benefit of this section, the deliv-

ery of the summons to an officer must be followed, within sixty days after the expiration of the time limited for the actual commencement of the action, by personal service thereof upon the defendant sought to be charged, or by the first publication of the summons, as against that defendant, pursuant to an order for service upon him in that manner.

§ 400. **Attempt to commence action in a court not of record.**—The last section, excluding the provision requiring a publication or service of the summons within sixty days, applies to an attempt to commence an action in a court not of record, where the summons is delivered to an officer authorized to serve the same, within the city or town wherein the person resides or the corporation is located, as specified in that section; provided that actual service thereof is made with due diligence.

Summons.

§ 431. **How personal service of summons made upon a domestic corporation.**—Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the state, as follows: * * *

3. * * * to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.

§ 432. **Id.; upon a foreign corporation.**—Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the state, as follows:

1. To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions under another name.

2. To a person designated for the purpose as provided in section sixteen of the general corporation law.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the state,

or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the state.

4. If the person designated as provided in section sixteen of the general corporation law dies or removes from the place where the corporation has its principal place of business within the state and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the state, process against the corporation in an action upon any liability incurred within this state or if the corporation has property within the state may after such death, removal or revocation and before another designation is made be served upon the secretary of state.

Subdivision 2 was amended by L. 1909, Ch. 65, § 3.

Subdivision 4 was added by L. 1909, Ch. 65, § 3.

For remainder of section, see Code of Civil Procedure, § 931a, and § 16, General Corporation Law.

§ 433. **Service of process, etc., to commence a special proceeding.**—The provisions of this article, relating to the mode of service of a summons, apply likewise to the service of any process or other paper, whereby a special proceeding is commenced in a court, or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law.

§ 438. **Cases in which service of summons by publication, etc., may be ordered.**—An order directing the service of a summons upon a defendant, without the state, or by publication, may be made in either of the following cases:

1. Where the defendant to be served is a foreign corporation; or, is an unincorporated association consisting of seven or more persons, having a president and treasurer, neither of whom is a resident of this state;

* * * * *

6. Where the defendant is a resident of the state or a domestic corporation; and an attempt was made to com-

mence the action against the defendant, as required in chapter fourth of this act, before the expiration of the limitation applicable thereto as fixed in that chapter; and the limitation would have expired, within sixty days next preceding the application, if time had not been extended by the attempt to commence the action.

7. Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by a law of the state, and the defendant is a stockholder thereof. * * *

§ 439. Papers upon which order for publication may be made.—The order must be founded upon a verified complaint, showing a sufficient cause of action against the defendant, to be served, and proof by affidavit of the additional facts required by the last section; and also, where the application is made upon the ground that the defendant is a foreign corporation, or not a resident of the State, or in a case specified in subdivision fourth, fifth, or seventh of the last section, that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons.

See also §§ 440–445, inclusive, Code of Civil Procedure.

Pleadings.

§ 525. Verification; how and by whom made.—The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows:

1. Where the party is a domestic corporation, the verification must be made by an officer thereof. * * *

3. Where the party is a foreign corporation; * * * or where the action or defense is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case the verification may be made by the agent or the attorney for the party.

§ 526. Form of affidavit of verification.— The affidavit of verification must be to the effect, that the pleading is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. Where it is made by a person, other than the party, he must set forth, in the affidavit, the grounds of his belief, as to all matters not stated upon his knowledge, and the reason why it is not made by the party.

Arrest.

§ 549. When the right to arrest depends upon the nature of the action.— A defendant may be arrested in an action, as prescribed in this title, where the action is brought for either of the following causes:

1. To recover a fine or penalty.
2. To recover damages for a personal injury; an injury to property, including the wrongful taking, detention or conversion of personal property; breach of a promise to marry; misconduct or neglect in office, or in a professional employment; fraud, or deceit; or to recover a chattel where it is alleged in the complaint that the chattel or a part thereof has been concealed, removed or disposed of so that it cannot be found or taken by the sheriff and with intent that it should not be so found or taken, or to deprive the plaintiff of the benefit thereof; or to recover for money received, or to recover property or damages for the conversion or misapplication of property where it is alleged in the complaint that the money was received or the property was embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor or counselor, or by an officer or agent of a corporation or banking association in the course of his employment, or by a factor, agent, broker, or other person in a fiduciary capacity. Where such allegation is made, the plaintiff cannot recover unless he proves the same on the trial of the action; and a judgment for the defendant is not a bar to the new action to recover the money or chattel. * * *

§ 610. **Order to recite grounds; service of order.**—The injunction order must briefly recite the grounds for the injunction. Where it is granted by the court, it must be served by delivering a certified copy thereof; where it is granted by a judge, it must be served by showing the original order, and delivering a copy thereof. Service of the order, upon a corporation, may be made as prescribed in this act, for making personal service of a summons upon a corporation. Copies of the papers, upon which the order was granted, must be delivered with the copy of the order.

§ 624. **Damages sustained by a third person.**—Where the defendant enjoined was an officer of a corporation, or joint stock association, or a bailee, agent, trustee, or other representative of another, and the damages sustained by him, are less than the sum specified in the undertaking, the court or the referee may also separately ascertain and determine the damages sustained, by reason of the injunction, by the corporation, association, or person, whom the defendant represents, to an amount not exceeding the surplus of the sum specified in the undertaking; and those damages may be recovered in a separate action, brought as prescribed in the next section.

§ 625. **Action on the undertaking.**—Where the damages have been ascertained by the decision of the court, or the confirmation of a referee's report, as prescribed in the last two sections, any person, entitled to the benefit of an undertaking, executed pursuant to the provisions of this title, may bring an action thereon, without further leave of the court.

Attachment against Property.

§ 635. **In what actions a warrant of attachment may be granted.**—A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in the next section, where the action is to recover a sum of money only, as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.

2. Wrongful conversion of personal property.

3. An injury to person or property, in consequence of negligence, fraud or other wrongful act.

For "injury to property," see Code of Civil Procedure, § 3343, subd. 10.

§ 636. What must be shown to procure the warrant.—To entitle the plaintiff to such a warrant he must show, by affidavit, to the satisfaction of the judge granting the same, as follows :

1. That one of the causes of action specified in the last section exists against the defendant. If the action is to recover damages for breach of contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or not a resident of the state; or, if he is a natural person and a resident of the state, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property with the like intent; or where, for the purpose of procuring credit, or the extension of credit, the defendant has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent, made with his knowledge and acquiescence as to his financial responsibility or standing; or, where the defendant, being an adult and a resident of the state, has been continuously without the state of New York for more than six months next before the granting of the order of publication of the summons against him, and has not made a designation of a person upon whom to serve a summons in his behalf, as prescribed in section four hundred and thirty of this act;

or a designation so made no longer remains in force; or service upon the person so designated can not be made within the state, after diligent effort.

§ 646. Attachment of unpaid subscription to foreign corporation.—Under a warrant of attachment against a foreign corporation, other than a corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation, made by a person within the county; or upon one or more shares of stock therein, held by such a person, or transferred by him, for the purpose of avoiding payment thereof.

For "foreign corporation," see Code of Civil Procedure, § 3343, subd. 18.

§ 647. Interest in shares or bonds.—The rights or shares which the defendant has in the stock of an association or corporation; or in a bond negotiable or otherwise, together with the interest and profits thereon, may be levied upon; and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges, with respect thereto, which the defendant had when they were so attached.

Amended by L. 1911, Ch. 419, in effect September 1, 1911.

§ 648. Attachment; bond, note, etc.—The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable, or otherwise, whether past due, or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the State; which belongs to the defendant, and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby. The attachment may also be levied

upon a right or interest, present or future, to any of the property or estate of a deceased person which may belong to the defendant and which could be legally assigned by him as legatee or distributee, whether the same exists by reason of the provisions of a last will and testament admitted to probate at the time the attachment is granted, or by operation of the law in case of the intestacy of the deceased. Levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the rights and interests of the defendant at the time of such levy, subject to the rights of the executor, administrator or trustee of such estate to administer the same according to law.

See § 708, Code of Civil Procedure.

§ 649. How property to be attached.—A levy under a warrant of attachment must be made as follows:

1. Upon real property, by filing with the clerk of the county where it is situated, a notice of the attachment, stating the names of the parties to the action, the amount of the plaintiff's claim, as stated in the warrant, and a description of the particular property levied upon. The notice must be subscribed by the plaintiff's attorney, adding the office address; and must be recorded and indexed by the clerk, in the same book, in like manner, and with like effect, as a notice of the pendency of an action.

2. Upon the personal property, capable of manual delivery, including a bond, a promissory note, or other instrument for the payment of money, by taking the same into the sheriff's actual custody. He must thereupon, without delay, deliver to the person from whose possession the property is taken, if any, a copy of the warrant, and of the affidavits upon which it was granted.

3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached, with the person holding the same; or, if it consists of a demand, other than as specified in the last subdivision, with the person against whom it exists; or, if it consists of a right or share in the stock of an association

or corporation, or interests or profits thereon, with the president, or other head of the association or corporation, or the secretary, cashier, or managing agent thereof, or if it consists of a right or interest in an estate of a deceased person arising under the provisions of a will or under the provisions of law in case of intestacy, with the executor or trustee under the will, or the administrator of the estate.

4. Upon property discovered in any action brought as prescribed in subdivision two of section six hundred and fifty-five of this act, by entering in the proper clerk's office, the judgment rendered in said action, and thereafter levying on said property in the manner prescribed in subdivisions one, two and three of this section.

§ 650. Certificate of defendant's interest to be furnished.— Upon the application of a sheriff, holding a warrant of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument, for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant, in the stock of the association or corporation, with all dividends declared, or incumbrances thereon; or the amount, nature, and description of the property held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires.

§ 651. Person refusing certificate may be examined.— If a person, to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, or the county judge of the county to which the warrant is issued, that there is reason to suspect that a certificate given by him is untrue, or

that it fails fully to set forth the facts, required to be shown thereby; the court or judge may make an order, directing him to attend, at a specified time, and at a place within the county to which the warrant is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

§ 707. When judgment enforceable only against attached property.—Where a defendant, who has not appeared, is a non-resident of the state, or a foreign corporation, and the summons was served without the state, or by publication, pursuant to an order obtained for that purpose, as prescribed in chapter fifth of this act, the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does not declare the effect of such a judgment, with respect to the application of any statute of limitation.

See §§ 435-445, Code of Civil Procedure.

Preferred Causes.

§ 791. Preference among civil actions.—Civil causes are entitled to preference among themselves, in the trial or hearing thereof, in the following order, next after the causes specified in the last section but one:

* * * * *

7. An action against a corporation or joint-stock association, issuing bank notes or any kind of paper credits, to circulate as money; or by or against the receiver of such corporation or association; an action in which a county or town is sole plaintiff or defendant.

8. An action against a corporation, founded upon a note or other evidence of debt for the absolute payment of money. An action upon an undertaking given upon an appeal to the court of appeals or to stay the execution on an appeal to the court of appeals.

Evidence.

§ 839. Admission by member of corporation.—The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation unless it was made concerning and while engaged in a transaction in which he was the authorized agent of the corporation; or unless it was made while a member of such corporation and testifying as a witness concerning a transaction of the corporation, when the official record of such testimony shall be received.

Subpoena duces tecum; order to produce.

§ 867. Production, etc., of book of account.—A person shall not be compelled to produce, upon a trial or hearing, a book of account, otherwise than by an order requiring him to produce it, or a subpoena duces tecum. Such a subpoena must be served at least five days before the day when he is required to attend. At any time after service of such a subpoena or order, the witness may obtain, upon such a notice as the judge, referee, or other officer prescribes, an order relieving him wholly or partly from the obligations imposed upon him by the subpoena or the order for production, upon such terms as justice requires touching the inspection of the book or any portion thereof, or taking a copy thereof or extracts therefrom, or otherwise. An order may be made, as prescribed in this section, by a judge of the court, or in a special proceeding pending out of court before an officer, by the officer, or, in either case, by a referee duly appointed in the cause and authorized to hear testimony. A justice of the peace, or other judge of a court not of record, may make such an order in an action brought in his court, at any time after the commencement thereof.

§ 868. Books, etc., of corporation, how produced.—The production, upon a trial, of a book or paper, belonging to or under the control of a corporation, may be com-

pelled, in like manner as if it was in the hands, or under the control, of a natural person. For that purpose, a subpoena duces tecum, or an order, made as prescribed in the last section, as the case requires, must be directed to the president, or other head of the corporation, or to the officer thereof, in whose custody the book or paper is.

§ 869. When personal attendance not required by subpoena duces tecum.—In a case specified in the last section, or where a subpoena duces tecum, or an order, made as prescribed in section eight hundred and sixty-six or section eight hundred and sixty-seven of this act, requires a public officer to attend, and bring a book or paper under his control, the subpoena or order is deemed to be sufficiently obeyed, if the book or paper is produced by a subordinate officer or employee of the corporation, or in the public office, who possesses the requisite knowledge to identify it, and to testify respecting the purposes for which it is used. If the personal attendance of a particular officer of the corporation or public officer is required, a subpoena, without a duces tecum clause, must also be served upon him.

Documentary Evidence.

§ 929. Book of foreign corporation; when evidence.—Where a party wishes to prove an act or transaction of a foreign corporation, the book or books of the corporation may be used for that purpose, as presumptive evidence, whether any or all of the parties are or are not members of the corporation.

§ 930. When a copy thereof is evidence.—If an original book is not produced at the trial, as prescribed in the last section, a copy thereof, or of an entry therein, verified as prescribed in the next section, may be used, with like effect as the original book; provided that the party, intending to use the copy, gives the adverse party at least ten days' notice of his intention, specifying briefly the

nature of the evidence proposed to be given. But this and the next section do not apply, where the foreign corporation is a party to the action, and seeks to prove its own act or transaction, in its own behalf.

§ 931. How copy to be verified.—The copy must be verified by the deposition, taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined and compared it with the original book, or the entry therein. The witness must testify that the copy produced is correct; that he made it, or compared it with the original; and that he then knew that the original book so copied, or containing the entry, was the book of the corporation; or that it was then acknowledged to him to be such, by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgment; and he must specify where, and in whose custody, the original was then kept.

§ 931a. Copy of designation of person upon whom to make service, as evidence.—An exemplified copy of a designation of a person upon whom to make service filed by a foreign corporation as provided in section sixteen of the general corporation law accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

Reference of Actions.

§ 1011. Reference by consent; when and how made.—Except in a case specified in the next section, the whole issue, or any of the issues in an action, either of fact or of law, must be referred, upon the consent of the parties, manifested by a written stipulation, signed by their attorneys, and filed with the clerk. Where the stipulation does not name the referee, he may be designated by the court, on motion of either party. Where the stipulation names the referee, the clerk must enter an order, of

course, referring the issue or issues for trial, to that person only. If the referee named in a stipulation refuses to serve, or if a new trial of an action tried by a referee so named is granted, the court must appoint another referee, unless the stipulation expressly provides otherwise.

See General Rules of Practice, Nos. 30, 79.

§ 1012. **Qualification of the last section.**— But a reference shall not be made, of course, upon the consent of the parties, in an action to annul the marriage, or for a divorce or a separation; or an action against a corporation, to obtain a dissolution thereof, the appointment of a receiver of its property, or the distribution of its property, unless it is brought by the attorney-general; or an action wherein a defendant, to be affected by the result of the trial, is an infant. In a case specified in this section, where the parties consent to a reference, the court may, in its discretion, grant or refuse a reference; and, where a reference is granted, the court must designate the referee. If the referee, thus designated, refuses to serve, or if a new trial of an action tried by a referee, so designated, is granted, the court must, upon the application of either party, appoint another referee.

See General Rules of Practice, No. 72.

Challenges to Jurors.

§ 1180. **Challenges, how tried. Exceptions to and review of the determination of the court, in reference thereto.**— * * * The fact that a juror is in the employ of a party to the action; or, if a party to the action is a corporation, that he is an employee thereof or a shareholder or a stockholder therein, shall constitute a good ground for a challenge to the favor as to such juror.

Garnishment.

§ 1391. **Execution against wages, incomes, etc.**—* * * Where a judgment has been recovered, and where an execution issued upon said judgment has been returned wholly or partly unsatisfied, and where any wages, debts, earnings, salary, income from trust funds or profits are due and owing to the judgment debtor or shall thereafter

become due and owing to him, to the amount of twelve dollars or more per week, but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of such judgment debtor shall be satisfied at one time and where more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor, they shall be satisfied in the order of priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing. The judgment creditor may apply to the court in which said judgment was recovered or the court having jurisdiction of the same without notice to the judgment debtor and upon satisfactory proof of such facts by affidavits or otherwise, the court, if a court not of record, a judge or justice thereof, must issue, or if a court of record, a judge or justice, must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor, and on presentation of such execution by the officer to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or may thereafter become due and owing to the judgment debtor, said execution shall become a lien and a continuing levy upon the wages, earnings, debts, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein which shall not exceed ten per centum thereof, and said levy shall be a continuing levy until said execution and the expenses thereof are fully satisfied and paid or until modified as hereinafter provided. It shall be the duty of any person or corporation, municipal or otherwise, to whom said execution shall be presented, and who shall at such time be indebted to the judgment debtor, named in such execution, or who shall become indebted to such judgment debtor in the future, and while said execution shall remain a lien upon said indebtedness to pay over to the officer presenting the same, such amount of such indebtedness as such execution shall prescribe until said ex-

ecution shall be wholly satisfied and such payment shall be a bar to any action therefor by any such judgment debtor. If such person or corporation, municipal or otherwise, to whom said execution shall be presented shall fail, or refuse to pay over to said officer presenting said execution, the percentage of said indebtedness, he shall be liable to an action therefor by the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied towards the payment of said execution. Either party may apply at any time to the court from which such execution shall issue or to any judge or justice issuing the same, or to the county judge of the county, and in any county where there is no county judge, to any justice of the city court upon such notice to the other party as such court, judge, or justice shall direct for a modification of said execution, and upon such hearing the said court, judge or justice may make such modification of said execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until fully paid and satisfied, or until further modified as herein provided.

Amended by L. 1911, Ch. 489, in effect September 1, 1911.

Determination of Claim to Real Property.

§ 1650. **This article applies to corporations.** An action may be maintained, as prescribed in this article, by or against a corporation, or by or against an unincorporated association, as if it was a natural person, or such an action may be maintained by or against the receiver or other successor of any such corporation or association.

Actions.

§ 1775. **Complaint in actions by or against corporations.**— In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the State, country, or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding, by or under which the corporation was created.

§ 1776. When proof of corporate existence unnecessary.

— In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation.

§ 1777. Misnomer, when waived.— In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer, or other pleading in the defendant's behalf.

§ 1778. Action against a corporation upon a note, etc.— In an action against a foreign or domestic corporation, to recover damages for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order, extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his demand therefor; or, if the service of the summons was otherwise than personal, at the expiration of twenty days after the service is complete.

§ 1779. When foreign corporation may sue.— An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act, or upon a liability or obligation, express or implied, aris-

ing out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the laws of the State, country, or government by or under which the corporation is created; or of an act, done at such a meeting, which is not in conflict with the same laws, or the laws of the State.

§ 1780. When foreign corporation may be sued.—An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State, or relating to property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

Judgment Creditor's Action.

§ 1879. Application of this article; what property cannot be reached.—This article does not apply to a case, where the judgment debtor is a corporation, created by or under the laws of the State. Nor does it authorize the discovery or seizure of, or other interference with, any property, which is expressly exempted by law from levy and sale, by virtue of an execution; or any money, thing in action, or other property, held in trust for a judgment debtor, where the trust has been created by, or the fund

so held in trust has proceeded from, a person other than the judgment debtor; or the earnings of the judgment debtor for his personal services, rendered within sixty days next before the commencement of the action, where it is made to appear, by his oath or otherwise, that those earnings are necessary for the use of a family, wholly or partly supported by his labor.

Action against Usurper of Office.

§ 1948. **Attorney-general may maintain action.**—The attorney-general may maintain an action, upon his own information, or upon the complaint of a private person, in either of the following cases:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises within the state, a franchise, or a public office, civil or military, or an office in a domestic corporation. * * * * *

3. Against one or more persons who act as a corporation, within the state, without being duly incorporated; or exercises within the state, any corporate rights, privileges, or franchises, not granted to them by the law of the state.

4. Against a foreign corporation which exercises within the state any corporate rights, privileges or franchises, not granted to it by the law of this state; or which within the state, has violated any provision of law, or, contrary to law, has done or omitted any act, or has exercised a privilege or franchise, not conferred upon it by the law of this state, where, in a similar case, a domestic corporation would, in accordance with section one hundred and thirty-one of the general corporation law, be liable to an action to vacate its charter and to annul its existence; or which exercises within the state any corporate rights, privileges or franchises in a manner contrary to the public policy of the state.

Subdivision 4 was amended by L. 1909, Ch. 65, § 3.

See 201 N. Y. 203; 130 App. Div. 626.

§ 1949. Proceedings when complaint names rightful incumbent.— In an action, brought as prescribed in the last section, for usurping, intruding into, unlawfully holding, or exercising an office, the attorney-general, besides stating the cause of action in the complaint, may, in his discretion, set forth therein the name of the person rightfully entitled to the office, and the facts showing his right thereto; and thereupon, and upon proof, by affidavit, that the defendant, by means of his usurpation or intrusion, has received any fees or emoluments belonging to the office, an order to arrest the defendant may be granted by the court, or a judge. The provisions of title first of chapter seventh of this act apply to such an order, and the proceedings thereupon and subsequent thereto, except where special provision is otherwise made in this title. For that purpose, the order is deemed to have been made as prescribed in section 549 of this act. Judgment may be rendered upon the right of the defendant, and of the party so alleged to be entitled; or only upon the right of the defendant, as justice requires.

§ 1950. Action triable by jury.— An action, brought as prescribed in this article, is triable, of course and of right, by a jury, in like manner as if it was an action specified in section 968 of this act, without procuring an order, as prescribed in section 970 of this act.

§ 1953. Damages; how recovered.— Where a final judgment has been rendered, upon the right and in favor of the person so alleged to be entitled, he may recover, by action, against the defendant, the damages which he has sustained, in consequence of the defendant's usurpation, intrusion into, unlawful holding, or exercise of the office.

§ 1954. One action against several persons.— Where two or more persons claim to be entitled to the same office or franchise, the attorney-general may bring the action against all, to determine their respective rights thereto.

§ 1955. When injunction may be granted.—In an action brought as specified in subdivisions third or fourth of section nineteen hundred and forty-eight of this act, the final judgment, in favor of the plaintiff, must perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted, upon proof, by affidavit, that the defendant or defendants have violated any of the provisions of either of the said subdivisions third or fourth of section nineteen hundred and forty-eight of this act. The provisions of title second of chapter seventh of this act apply to such a temporary injunction, and the proceedings thereupon, except where provision is otherwise made in this title. For that purpose, the injunction order is deemed to have been granted as prescribed in section six hundred and three of this act. In the trial of an action brought as prescribed in subdivisions third or fourth of section nineteen hundred and forty-eight of this act, a party or a witness is not excused from answering a question on the ground that such answer will tend to incriminate him; but such answer cannot be used as evidence against the person so answering, in a criminal action or criminal proceeding.

§ 1956. Final judgment in action for usurping office, etc.—In any other action, brought as prescribed in this article, where a defendant is adjudged to be guilty of usurping or intruding into, or unlawfully holding or exercising, an office, franchise, or privilege, final judgment must be rendered, ousting and excluding him therefrom, and in favor of the people or the relator, as the case requires, for the costs of the action. As a part of the final judgment, the court may, in its discretion, also award, that the defendant, or, where there are two or more defendants, that one or more of them, pay to the people a fine, not exceeding two thousand dollars. The judgment for the fine may be docketed, and execution may be issued thereupon, in favor of the people, as if it had been rendered in an action to recover the fine. The fine, when collected, must be paid into the treasury of the State.

Supplementary Proceedings.

§ 2463. **Cases where this chapter is not applicable; what property cannot be reached.**— This article does not authorize the seizure of, or other interference with, any property, which is expressly exempt by law from levy and sale by virtue of an execution; or any money, thing in action or other property held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from a person, other than the judgment debtor; or the earnings of the judgment debtor for his personal services rendered within sixty days next before the institution of the special proceeding; when it is made to appear, by his oath or otherwise, that those earnings are necessary for the use of a family, wholly or partly supported by his labor.

Since the amendment to this section by L. 1908, Ch. 278, proceedings supplementary to execution lie against domestic and foreign corporations. (See *Rabbe v. Astor Trust Co.*, 61 Misc. 651, and *Meyer v. Consolidated Ice Co.*, 132 App. Div. 265, aff'd on another point in 196 N. Y. 471.) The cases of *Logan v. McCull Pub. Co.*, 140 N. Y. 447, and *Keystone Pub. Co. v. Hill Dryer Co.*, 55 Misc. 625, were decided before the amendment.

Probate of a Will and Grant of Letters of Administration.

§ 2643. **Letters of administration with will annexed; when and to whom.**— If no person is named as executor in the will, or selected by virtue of a power contained therein; or if, at any time, by reason of death, incompetency adjudged by the surrogate, renunciation in either of the methods prescribed in sections 2639 and 2642 of this act, or revocation of letters, there is no executor, or administrator with the will annexed, qualified to act; the surrogate must, upon the application of a creditor of the decedent, or a person interested in the estate of the decedent, or having a lien upon any real property upon which the decedent's estate has a lien, and upon such notice to the other creditors and persons interested in the estate, as the surrogate deems proper, issue letters of administration with the will annexed, as follows:

1. To one or more of the residuary legatees, who are qualified to act as administrators. If any one of such legatees who would otherwise be so entitled is a minor, administration shall be granted to his guardian, if competent. A corporation which is a residuary legatee shall be qualified to act as such administrator, although not specially authorized by its charter or any provision of law. * * * * *

Subdivision 1 was amended by L. 1910, Ch. 585.

Justices of the Peace.

§ 2865. Actions by and against officers, etc.; and by executors, etc.—An action, cognizable by a justice of the peace, may be brought by or against a corporation;
* * *

§ 2869. In what town, etc., action must be brought.—An action must be brought before a justice of a town or city wherein one of the parties resides, or a justice of an adjoining town or city in the same county, except in one of the following cases:

* * * * *

2. Where the plaintiff is not a resident of the county, or if there are two or more plaintiffs, when all are non-residents thereof, it must be brought in the town where the defendant resides or in any adjoining town thereto.

3. Where the defendant is a non-resident of the county, it may be brought before a justice of the town or city, in which he is at the time of the commencement of the action.

4. Where it is specially prescribed by law, that a particular action may be brought before a justice of the town, city, county, or district, where an offense was committed, or where property is found.

5. In any town adjoining an incorporated city, no justice of such town shall have jurisdiction of any action brought against a resident of such adjoining city, unless one of the parties plaintiff in such action is a resident of such town.

A defendant designated in section 2879 * * * of this act, is deemed, for the purposes of this section, a resident of the town or city, where the person, to whom a copy of the summons is delivered, resides.

§ 2879. Service of summons upon a corporation.—Where the defendant to be served is a corporation, or person, company or partnership doing business in another county than that in which he or it resides, the summons may be personally served upon it or him by delivering a copy thereof to an officer, managing agent or person, to whom a copy of the summons in an action, brought against the corporation in the supreme court, might be delivered, as prescribed in sections four hundred and thirty-one and four hundred and thirty-two of this act, or, to any director, managing agent or trustee of the corporation, person, partnership or company by whatever official title he or it is called.

Attachment in Justices' Courts.

§ 2905. In what actions, warrant of attachment may be granted.—In an action brought before a justice of the peace a warrant of attachment against the property of one or more defendants must be granted, upon the application of the plaintiff, as prescribed in this article, where the action is brought upon a judgment, or to recover for one of more of the following causes:

1. Breach of a contract, express or implied.
2. Wrongful conversion of personal property.
3. Any other injury to personal property, in consequence of negligence, fraud, or other misconduct.

§ 2906. What must be shown to procure a warrant.—To entitle the plaintiff to such a warrant, he must show, by affidavit, to the satisfaction of the justice as follows:

1. That a sufficient cause of action exists against the defendant, to recover damages for one or more of the

causes specified in the last section. If the action is upon a judgment, or to recover for breach of a contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation; * * * or if the defendant is a natural person, or a domestic corporation, that he or it has removed, or is about to remove, property from the county where the defendant, being a natural person, last resided, or, being a corporation, last kept its principal office, or from the county in which the action is brought, with intent to defraud his or its creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property, with the like intent; * * *

The affidavit must be filed with the justice when the warrant is granted.

Security for Costs in Justices' Courts.

§ 3074. * * * The defendant in an action brought in a justice's court may require security for costs to be given, where the plaintiff is a foreign corporation. * * *

Security for Costs Generally.

§ 3268. When defendant may require security for costs.—The defendant, in an action brought in a court of record, may require security for costs to be given, as prescribed in this title, where the plaintiff was, when the action was commenced, either * * *

2. A foreign corporation; * * *

See § 3160, Code of Civil Procedure.

Subdivision 1 amended by L. 1910, Ch. 118.

§ 3270. The last two sections† qualified.— * * * if there are two or more plaintiffs, the defendant cannot require security for costs to be given, unless he is entitled to require it of all the plaintiffs.

† Sections 3268 and 3269.

Definitions.

§ 3343. **Definition of domestic corporation; foreign corporation.**— In construing this act, the following rules must be observed, except where a contrary intent is expressly declared in the provision to be construed, or plainly apparent from the context thereof: * * *

18. A “domestic corporation” is a corporation created by or under the laws of the state; or located in the state, and created by or under the laws of the United States, or by or pursuant to the laws, in force in the colony of New York, before the 19th day of April, in the year seventeen hundred and seventy-five. Every other corporation is a “foreign corporation.”

PENAL LAW PROVISIONS.

Laws of 1909, Chapter 88, constituting Chapter 40 of the Consolidated Laws.

§ 280. Corporations and voluntary associations not to practice law.— It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or render or furnish legal services or advice, or to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It

Only those sections of the Penal Law pertaining to corporations generally are given in this book. See Penal Law, §§ 290-302, inclusive, and § 889, relating to Banking, §§ 1190-1202, inclusive, relating to Insurance, and §§ 1980-1991, inclusive, relating to Railroads.

shall be unlawful further for any corporation or voluntary association to solicit itself or by or through its officers, agents or employees any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation or voluntary association violating the provisions of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited or assists such corporation or voluntary association to do such prohibited acts is guilty of a misdemeanor. The fact that such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation

to which it is or may be a party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the appellate division of the supreme court of the department in which the principal office of said corporation or voluntary association may be located.

Added by L. 1909, Ch. 483; amended by L. 1911, Ch. 317, in effect September 1, 1911. See §§ 274-6, Penal Law.

§ 421. Untrue and misleading advertisements.—Any person, firm, corporation or association or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published in this state, knowingly makes or disseminates any statement or assertion of fact concerning the quantity, the quality, the value, the method of production or manufacture, or the reason for the price of his or their merchandise, or the manner or source of purchase of such merchandise, or the possession of prizes, rewards or distinctions conferred on account of such merchandise or the motive or purpose of a sale, intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to mislead; or any person, firm, corporation or association or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published or circulated in any language in this state, knowingly makes or disseminates any statement or assertion of fact knowing the same to be false, concerning the extent, location, ownership, title or other characteristic, quality or attribute of any real estate located in this state or elsewhere, or the motive or purpose of a sale of such real estate intended to give the appearance of an offer advantageous to the purchaser which is untrue and

calculated to mislead, is guilty of a misdemeanor. Nothing contained in this section shall apply to a sale of real estate at public auction conducted by an * auctioneer duly licensed by a city of the first class.

Amended by L., 1911, Ch. 759, in effect September 1, 1911.

§ 430. **Marking articles made of linen.**—Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any collars or cuffs marked, stamped, or branded with the words “linen,” “pure linen” or “all linen” or incased or inclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is “linen,” “pure linen,” or “all linen,” unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filling, is guilty of a misdemeanor.

§ 431. **Marking articles made of gold.**—Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, constructed in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon any mark indicating or designed or intended to indicate that the gold or alloy of gold in such article is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy, is guilty of a misdemeanor.†

§ 432. **Illegal charges for elevating, receiving or discharging grain.**—A person who charges for elevating,

* So in original.

† See §§ 952a-g, inclusive, Code of Criminal Procedure.

receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor.

§ 433. Sale of agricultural products on commission.—

A person* who violates any provision of section three hundred and ninety-seven of the general business law is guilty of a misdemeanor.

§ 434. Concealing foreign matter in merchandise.—

A person* who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.

§ 435. False labels.—A person,* who, with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label, or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or,
2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or,
3. Sells or exposes for sale any goods in bulk to which

* See § 37, General Construction Law, *post*.

no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute,

Is guilty of a misdemeanor.

§ 436. **Using false marks as to manufacture.**—A person* who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a misdemeanor.

§ 437. **Penalty for selling half wine not labeled.**—A person* who sells, offers for sale or manufactures with intent to sell, any wine known as "half wine," which is not stamped, marked or labeled as required by law, is guilty of a misdemeanor.

§ 438. **Skimmed milk.**—A person* who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.

* See note to § 433, Penal Law, *ante*.

§ 439. Corrupt influencing of agents, employees or servants.—Whoever gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who without the knowledge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner to his principal's, employer's or master's business; or an agent, employee or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person* who gives or offers such an agent, employee or servant such commission, discount or bonus shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by such fine and by imprisonment for not more than one year.

§ 440. Conducting business under assumed name.—

1. No person or persons shall hereafter carry on or conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, con-

* See note to § 433, Penal Law, *ante*.

ducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting, or intending to conduct said business.

2. Persons conducting such business under an assumed name, or under any such designation referred to in subdivision one, on September first, nineteen hundred, shall file such certificate as hereinbefore prescribed, within thirty days after that date, and persons thereafter conducting or transacting business as aforesaid shall, before commencing said business, file such certificate in the manner hereinbefore prescribed.

3. The several county clerks of this state shall keep an alphabetical index of all persons filing certificates, provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate duly certified to by the county clerk in whose office the same shall be filed shall be presumptive evidence in all courts of law in this state of the facts therein contained.

4. This section shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall this section be deemed or construed to prevent the lawful use of a partnership name or designation, provided that such partnership name or designation shall include the true or real name of at least one of such persons transacting such business.

5. Any person or persons carrying on, conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

§ 441. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner.—Any person* who causes to be publicly performed

* See note to § 433, Penal Law, *ante*.

or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner, or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a misdemeanor.

§ 442. Provisions when property is purchased on credit by aid of written statement of purchaser's ability to pay. — Whenever property shall be purchased by aid of a statement relating to the purchaser's means or ability to pay, made in writing and signed by the party to be charged, and in said statement the party to be charged shall state that he conducts a specified kind of business and keeps books of account of said business, then, if at the expiration of any term of credit obtained by him in so purchasing said property he shall fail to pay for the same, he shall at all times during the period of ninety days subsequent to such failure to pay, upon the request of the persons from whom said property was purchased, or their agents duly accredited in writing, produce within ten days after such request is made his said books of account and each and every one of them mentioned or described in said statement and permit the persons from whom said property was purchased, or their agents duly accredited in writing, to fully examine such books of account and each and every one of them mentioned or described in said statement, and to make copies of any part thereof. Upon such request being made, failure to so produce within ten days said books of account and each and every one of them mentioned or described in said statement shall be presumptive evidence that each and every pretense relating to the purchaser's means or ability to pay in said statement contained were false at the time of making said statement and were known to the purchaser to be false.

§ 531. **Coercion by employers.**—Any person* or employer of labor, and any person of any corporation on behalf of such corporation, who shall hereafter coerce or compel any person, employee, laborer or mechanic, to enter into an agreement, either written or verbal from such person, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person securing employment, or continuing in the employment of any such person, employer or corporation, shall be deemed guilty of a misdemeanor.

The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

§ 584. **Witnesses' privileges.**—No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court, magistrate, or referee, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or †for forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation, proceeding or trial.

New. Added by L. 1910, Ch. 395, in effect June 6, 1910.

* See § 37, General Construction Law, *post*.

† So in original.

ARTICLE 64**Corporations**

- Section 660.** Frauds in the organization of corporations.
661. Frauds in procuring organization of corporations.
662. Fraudulent issue of stocks and bonds.
663. Acting for foreign corporations not authorized to do business in this state.
664. Misconduct of officers and directors of stock corporations.
665. Misconduct of directors, officers, agents and employees of corporations.
666. Unlawful use of certain titles in connection with corporate name.
667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.
668. Misconduct at corporate elections.
669. Misconduct of officers and agents of pipe-line corporations.

§ 660. Frauds in the organization of corporations.—A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced,

Is guilty of a misdemeanor.

§ 661. Frauds in procuring organization of corporations.—An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

§ 662. Fraudulent issue of stocks and bonds.—An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge or issue, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

§ 663. **Acting for foreign corporations not authorized to do business in this state.**—Any person, or corporation, who:

1. Acts as agent or representative of any mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state; or,

2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state,

Is guilty of a misdemeanor.

§ 664. **Misconduct of officers and directors of stock corporations.**—A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock

of the corporation; or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of an instalment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock,

Is guilty of a misdemeanor.

An officer or director of a stock corporation who:

6. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

7. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share,

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

§ 665. Misconduct of directors, officers, agents and employees of corporations. A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (a), concurs in making or publishing any

written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or (b), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer,

Is guilty of a misdemeanor.

§ 666. **Unlawful use of certain titles in connection with corporate name.**—Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words “trust,” “bank,” “banking,” “insurance,” “assurance,” “indemnity,” “guarantee,” “guaranty,” “savings,” “investment,” “loan,” “benefit,” as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred and four, lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substan-

tially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

§ 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.—It is no defense to a prosecution for a violation of the provisions of this article and article twenty-six, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article and article twenty-six includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article and article twenty-six. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article and article twenty-six occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

§ 668. Misconduct at corporate elections.—Any person who:

1. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person

for any sum of money or thing of value, except as expressly authorized by law; or,

2. Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector,

Is guilty of a misdemeanor.

§ 669. Misconduct of officers and agents of pipe-line corporations.—Any officer, agent or manager of a pipe-line corporation who:

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,

2. Charges, accepts or agrees to accept for such receipt, transportation and delivery, a sum different from the amount fixed by such regulations; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations,

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

§ 670. Misconduct by officers and directors of life or casualty insurance corporations upon the co-operative or assessment plan or of fraternal beneficiary societies, orders or associations.—Any officer or director of a life or casualty insurance corporation upon the co-operative or assessment plan or of a fraternal beneficiary society, order or association, who shall sell his position as such officer or director for any money or valuable consideration, or who shall accept or receive, directly or indirectly, any money or valuable consideration for his resignation

as such officer or director, shall be guilty of a felony if the money or valuable consideration accepted or received for the sale or resignation of such position as officer or director shall be more than five hundred dollars, and, if a less amount, shall be guilty of a misdemeanor.

New. Added by L. 1910, Ch. 620, in effect June 23, 1910.

§ 759. **Refusal to permit employees to attend election.**—A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

§ 882. **Falsely indicating person as corporate officer.**—The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 889. **Forgery in third degree.**—A person who:

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of account, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. With intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram, or other written communication, paper, or instrument by which making, altering, forging or counterfeiting, any

other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Shall alter, or shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or, with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered,

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or,

2. Makes a false entry in any such account or book of accounts; or,

3. Wilfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction,

Is guilty of forgery in the third degree.

§ 890. Officer of corporation selling fraudulent shares.

—An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who wilfully and with design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in section eight hundred and ninety-three of this chapter for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

§ 893. Punishment for forgery in third degree.—Forgery in the third degree is punishable by imprisonment for not more than five years.*

§ 926. False rumors as to stocks, bonds or public funds.—A person, who, with intent to affect the market price of the public funds of this state, or of the United

* See § 890, *ante*.

States, or of any state or territory thereof, or of a foreign country or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or any merchandise or commodity whatever:

1. Without lawful authority, falsely signs the name of an officer of a corporation, or of any other person to a letter, message, or other paper; or

2. Utters or circulates such a letter, message, or paper, knowing that the same has been so falsely signed; or,

3. Knowingly circulates any false statement, rumor, or intelligence, is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years, or both.

Derivation.— Penal Code, § 435.

See *People v. Goslin*, 67 App. Div. 16, affirmed in 171 N. Y. 627.

§ 950. False statements in regard to employment.— Any person, firm, association or corporation, or any employee or agent thereof, who makes to any person furnishing or seeking employment any statement which is false, knowing the same to be false, in regard to any employment, work or situation, its nature, location, duration, wages, or salary attached thereto, or the circumstances surrounding the said employment, work, or situation, or who shall offer or hold himself out as in a position to secure or furnish employment without having an order therefor or such employment to be filled or shall misrepresent any other material matter in connection with said employment, work, or situation, and by reason of such statement, offer, holding out or misrepresentation, any person shall seek the employment, work or situation, in respect to which such statement, offer, holding out or misrepresentation was made, shall be guilty of a misdemeanor.

Added by L. 1911, Ch. 575, in effect June 30, 1911.

§. 1271. **Hours of labor to be required.**—Any person or corporation:

1. Who, contracting with the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employees of a corporation owning or operating a brickyard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense.

If any contractor with the state or a municipal corpo-

ration shall require more than eight hours for a day's labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

§ 1272. Payment of wages.—A corporation or joint-stock association or person carrying on the business thereof, by lease or otherwise, who does not pay the wages of all its employees in accordance with the provisions of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars for each offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense.

Amended by L. 1909, Ch. 205, taking effect April 17, 1909.

§ 1275. Violations of provisions of labor law.—Any person who violates or does not comply with:

1. The provisions of article three of the labor law, relating to the department of labor;
2. The provisions of article four of the labor law, relating to the bureau of labor statistics;
3. The provisions of article five of the labor law, relating to the bureau of factory inspection;
4. The provisions of article six of the labor law, relating to factories;
5. The provisions of article seven of the labor law, relating to the manufacture of articles in tenements;
6. The provisions of article eight of the labor law, relating to bakeries and confectionery establishments;
7. The provisions of article eleven of the labor law, relating to mercantile establishments, and the employment of women and children therein;
8. And any person who knowingly makes a false statement in or in relation to any application made for

an employment certificate as to any matter required by articles six and eleven of the labor law to appear in any affidavit, record, transcript or certificate therein provided for,

Is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

Amended by L. 1911, Ch. 749, in effect September 1, 1911.

§ 1276. Negligently furnishing insecure scaffolding.— A person or corporation employing or directing another to do or perform any labor in the erection, repairing, altering or painting, any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe, unsuitable or improper scaffolding, hoists, stays, ladders or other mechanical contrivances; or who hinders or obstructs any officer detailed to inspect the same, destroys or defaces any notice posted thereon, or permits the use thereof after the same has been declared unsafe by such officer contrary to the provisions of article two of the labor law, is guilty of a misdemeanor.

§ 1277. Neglect to complete or plank floors of buildings constructed in cities.— A person, constructing a building in a city, as owner or contractor, who violates the provisions of article two of the labor law, relating to the completing or laying of floors, or the planking of such floors or tiers of beams as the work of construction progresses, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine for each

offense of not less than twenty-five nor more than two hundred dollars.

§ 1932. Punishment of corporation convicted of felony.
— In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

Former § 13, part, Penal Code. For remainder of § 13, see § 1931, Penal Law.

CODE OF CRIMINAL PROCEDURE PROVISIONS.

§ 335. **Plea of guilty, how put in.**—A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation, in which case it may be put in by counsel.

§ 675. **Summons upon an information or presentment against a corporation, by whom issued, and when returnable.**—Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

§ 676. **Form of the summons.**—The summons must be in substantially the following form:

“County of Albany [or as the case may be].

“In the name of the people of the state of New York:

“To the [naming the corporation].

“You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon the information of A. B., for [designating the offense, generally].

“Dated at the city [or ‘town’] of ———, the ——— day of ———, 18—.

G. H., Justice of the peace”

[or as the case may be].

§ 677. **When and how served.**—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing

the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 678. **Examination of the charge.**—At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 679. **Certificate of the magistrate, and return thereof with the depositions.**—After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221.

§ 680. **Grand jury may proceed as in the case of a natural person.**—If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

§ 681. **Appearance, and plea to indictment, and proceedings thereon.**—When an indictment is filed against any corporation, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to which it is sent or removed, or the district attorney of the county, must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a demurrer or written plea to be verified in like manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form:

Supreme Court, county of
(state the proper county or court, as the case may be).

The People of the State of New York

vs.

The A. B. Company.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the day of , charging you with the crime of (designating the offense generally), at a term of the Supreme Court (or as the case may be) of this county, at (naming the place) on (stating the day and hour), and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of the
day of , 18 .

C. D.,
District Attorney.

(or by order of the court, E. F., clerk, as the case may be).

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when an indictment shall have been filed against a corporation it may voluntarily appear and answer the same by counsel duly authorized to so appear for it; in which case the court acquires full jurisdiction over the corporation in the same manner as if the summons had been issued and served.

§ 682. **Fine on conviction, how collected.**—When a fine is imposed upon a corporation upon conviction, it may be collected in the same manner as a judgment in a civil action, and if an execution issued upon such judgment be returned unsatisfied, the district attorney of the county may thereupon bring an action in the name of the people of the state of New York, to procure a judgment sequestering the property of the corporation, as provided by the Code of Civil Procedure.

See §§ 952a-g, inclusive, concerning procedure in cases of marked sterling, "coin," coin silver, silver, gold and metal.

LABOR LAW PROVISIONS

Laws of 1909, Chapter 36, constituting Chapter Thirty-one of the Consolidated Laws.

§ 3. Hours to constitute a day's work.— Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for over work at an increased compensation except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith. * * *

Amended by L. 1909, Ch. 292, §§ 1 and 2, in effect May, 1909.

The remainder of § 3 does not apply to private corporations.

§ 5. Hours of labor in brickyards.— Ten hours, exclusive of the necessary time for meals, shall constitute a legal day's work in the making of brick in brickyards owned or operated by corporations. No corporation owning or operating such brickyard shall require employees to work more than ten hours in any one day, or to commence work before seven o'clock in the morning. But overwork and work prior to seven o'clock in the morning for extra compensation may be performed by agreement between employer and employee.

§ 9. Payment of wages by receivers.— Upon the appointment of a receiver of a partnership or of a corporation organized under the laws of this state and doing business therein, other than a moneyed corporation, the wages of the employees of such partnership or corporation shall be preferred to every other debt or claim.

Only those provisions of the Labor Law pertaining to corporations are included in this book.

§ 10. **Cash payment of wages.**—Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corporation thereof, either as a contractor or a subcontractor therewith, shall pay to each employee engaged in his, their or its business the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employees in scrip, commonly known as store money-orders. No person, firm or corporation engaged in carrying on public work under contract with the state or with any municipal corporation of the state, either as a contractor or subcontractor therewith, shall, directly or indirectly, conduct or carry on what is commonly known as a company store, if there shall, at the time, be any store selling supplies within two miles of the place where such contract is being executed. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

See 199 N. Y. 108.

§ 11. **When wages are to be paid.**—Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment.

But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month.

See 199 N. Y. 108.

§ 12. Penalty for violation of preceding sections.— If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in his name of office in a civil action.

Amended by L. 1909, Ch. 206, § 1, taking effect April 17, 1909.

ARTICLE XIV.

Employer's Liability.

§ 200. **Employer's liability for injuries.**— When personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time:

1. By reason of any defect in the condition of the ways, works, machinery, or plant, connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition;

2. By reason of the negligence of any person in the service of the employer intrusted with any superintendence or by reason of the negligence of any person intrusted with authority to direct, control or command any employee in the performance of the duty of such employee. The employee, or in case the injury results in death, the executor or administrator of a deceased employee who has left him surviving a husband, wife or next of kin, shall have the same right of compensation and remedies against the employer as if the employee had not been an employee of nor in the service of the employer nor engaged in his work. The provisions of law relating to actions for causing death by negligence, so far as the same are consistent with this act, shall apply to an action brought by an executor or administrator of a deceased employee, suing under the provisions of this article. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for the injuries to the employees of such con-

tractor or subcontractor, caused by any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer, or of some person intrusted by him with the duty of seeing that they were in proper condition.

Amended by L. 1910, Ch. 352.

Derivation.—L. 1902, Ch. 600, § 1.

§ 201. Notice to be served.—No action for recovery of compensation for injury or death under this article shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in this section, he may give the same within ten days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator may give such notice within sixty days after his appointment, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury if it be shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. If such notice does not apprise the employer of the time, place or cause of injury, he may, within eight days after service thereof, serve upon the sender a written demand for a further notice, which demand must specify the particular in which the first notice is claimed to be defective, and a failure by the employer to make such demand as herein provided shall be a waiver of all defects that the notice may contain.

After service of such demand, as herein provided, the sender of such notice may at any time within eight days thereafter serve an amended notice which shall supersede such first notice and have the same effect as an original notice hereunder. The notice required by this section shall be served on the employer, or if there is more than one employer, upon one of such employers, and may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice or demand may be served by post by letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation.

Amended by L. 1910, Ch. 352.

Derivation.—L. 1902, Ch. 600, § 2.

§ 202. Assumption of risks; contributory negligence, when a question of fact.—An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation or employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this article takes effect, be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In an action brought to recover damages for personal injury or for death resulting therefrom received after this act takes effect, owing to any cause, including open and visible defects, for which

the employer would be liable but for the hitherto available defense assumption of risk by the employee, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he has been informed of the danger of personal injury therefrom shall not be, as matter of fact or as matter of law, an assumption of the risk of injury therefrom, or as negligence contributing to such injury. The question whether the employee understood and assumed the risk of such injury, or was guilty of contributory negligence, by his continuance in the same place and course of employment with knowledge of the risk of injury, shall be one of fact, subject to the usual powers of the court in a proper case, to set aside a verdict rendered contrary to the evidence, but an employee, or his legal representative, shall not be entitled under this article to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, or who had intrusted to him some superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee; or unless such defect could have been discovered by such employer by reasonable and proper care, tests or inspection.

Amended by L. 1910, Ch. 352.

Derivation.—L. 1902, Ch. 600, § 3.

§ 202-a. Trial; burden of proof.—On the trial of any action brought by an employee or his personal representative to recover damages for negligence arising out of and in the course of such employment, contributory negligence of the injured employee shall be a defense to be so pleaded and proved by the defendant.

§ 203. Defense; insurance fund.—An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries, for which compensation may be recovered under this article, or to any relief society or benefit fund created under the laws of this state, may prove in mitigation of damages recoverable by an employee under this article such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of the employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Derivation.—L. 1902, Ch. 600, § 4.

§ 204. Existing rights of action continued.—Every existing right of action for negligence or to recover damages for injuries resulting in death is continued and nothing in this article contained shall be construed as limiting any such right of action, nor shall the failure to give the notice provided for in section two hundred and one of this article be a bar to the maintenance of a suit upon any such existing right of action.

Derivation.—L. 1902, Ch. 600, § 5.

§ 205. Consent by employer and employee to compensation plan.—When and if any employer in this state and any of his employees shall consent to the compensation plan described in sections two hundred and six to two hundred and twelve, inclusive, of this article, hereinafter referred to as the plan, and shall signify their consent thereto in writing signed by each of them or their authorized agents, and acknowledged in the manner prescribed by law for taking the acknowledgment of a conveyance of real property, and such writing is filed with the county clerk of the county in which it is signed by the employee, then so long as such consent has not expired or been canceled as hereinafter provided, such em-

ployee, or in case injury to him results in death, his executor and administrator, shall have no other right of action against the employer for personal injury or death of any kind, under any statute or at common law, save under the plan so consented to, except where personal injury to the employee is caused in whole or in part by the failure of the employee to obey a valid order made by the commissioner of labor or other public authority authorized to require the employer to safeguard his employees, or where such injury is caused by the serious or willful misconduct of the employer. In such excepted cases thus described, no right of action which the employee has at common law or by any other statute shall be affected or lost by his consent to the plan, if such employee, or in case of death his executor or administrator, commences such action before accepting any benefit under such plan or giving any notice of injury as provided in section two hundred and six hereof. The commencing of any legal action whatsoever at common law or by any statute against the employer on account of such injury, except under the plan, shall bar the employee, and in the event of his death his executors, administrators, dependents and other beneficiaries, from all benefit under the plan. This section and section two hundred and six to two hundred and twelve, inclusive, of this article shall not apply to a railroad corporation, foreign or domestic, doing business in this state, or a receiver thereof, or to any person employed by such corporation or receiver.

Added by L. 1910, Ch. 352, § 3.

§ 206. **Liability to pay compensation; notice of accident.**— If personal injury by accident arising out of and in the course of the employment is caused to the employee, the employer shall, subject as hereinafter mentioned, be liable to pay compensation under the plan at the rates set out in section two hundred and seven of this article; provided that the employer shall not be liable in respect of any injury which does not disable the em-

ployee for a period of at least two weeks from earning full wages at the work at which he was employed, and that the employer shall not be liable in respect of any injury to the employee which is caused by the serious and willful misconduct of that employee. No proceedings for recovery under the plan provided hereby shall be maintained unless notice of the accident has been given to the employer as soon as practicable after the happening thereof and before the employee has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation with respect to the accident has been made within six months from the occurrence of the accident, or in the case of death of the employee, or in the event of his physical or mental incapacity within six months after such death or removal of such physical or mental incapacity, or in the event that weekly payments have been made under the plan, within six months after such payments have ceased; but no want of or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings under the plan unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this plan and shall state the name and address of the employee injured, the date and place of the accident and in simple language the cause thereof. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

Added by L. 1910, Ch. 352, § 3.

§ 207. Amount of compensation; persons entitled; physical examination.—The amount of compensation under the plan shall be: 1. In case death results from injury:

(a) If the employee leaves a widow or next of kin at the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily earnings of the employee at the rate at which he was being paid

by the employer at the time of the accident, but not more in any event than three thousand dollars. Any weekly payments previously made under the plan shall be deducted in ascertaining such amount payable on death.

(b) If such widow or next of kin or any of them are in part only dependent upon his earnings, such sum not exceeding that provided in subdivision a as may be determined to be reasonable and proportionate to the injury to such dependents.

(c) If he leaves no widow, or next of kin so dependent in whole or in part, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under the plan, in case of death of the injured employee, shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the person to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the employee from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been employed less than a year, then a weekly payment of not exceeding three times the average daily earnings on full time for such less period.

In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the acci-

dent but shall amount to one-half of such difference. In no event shall any weekly payment payable under the plan exceed ten dollars per week or extend over more than eight years from the date of the accident. Any person entitled to receive weekly payments under the plan is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the employee, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses so to submit or obstructs the same, his right to weekly payments shall be suspended until such examination shall have taken place, and no compensation shall be payable under the plan during such period. In case an injured employee shall be mentally incompetent at the time when any right or privilege accrues to him under the plan, a committee or guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time herein provided for shall run so long as said incompetent employee has no committee or guardian.

Added by L. 1910, Ch. 352, § 3.

§ 208. **Settlement of disputes.**—Any question of law or fact arising in regard to the application of the plan in determining the compensation payable thereunder or otherwise shall be determined either by agreement or by arbitration as provided in the code of civil procedure, or by an action at law as herein provided. In case the employer shall be in default in any of his obligations to the employee under the plan, the injured employee or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under the plan in any court having jurisdiction thereof as on a written contract. Such action shall be conducted in the same manner as an action at

law for the recovery of damages for breach of a written contract, and shall for all purposes, including the determination of jurisdiction, be deemed such an action. The judgment in such action, in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due and prospectively due under the plan. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court by which such executor or administrator is appointed, in accordance with the terms of this article on petition of any party on such notice as such court may direct.

Added by L. 1910, Ch. 352, § 3.

§ 209. Preferential claim; not assignable or subject to attachment; attorney's fee.—Any person entitled to weekly payments under the plan against any employer shall have the same preferential claim therefor against the assets of the employer as now allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under the plan shall not be assignable or subject to attachment, levy or execution. No claim of an attorney for any contingent interest in any recovery under the plan for services in securing such recovery shall be an enforceable lien thereon, unless the amount of the same be approved in writing by a justice of the supreme court, or in case the same is tried in any court, before the justice presiding at such trial.

Added by L. 1910, Ch. 352, § 3.

§ 210. Cancellation of consent.—When a consent to the plan shall have been filed in the office of the county clerk as herein provided, it shall be binding upon both parties thereto as long as the relation of employer and employee exists between the parties, and expire at the end of such employment, but it may at any time be canceled on sixty days' notice in writing from either party

to the other. Such notice of cancellation shall be effective only if served personally or sent by registered letter to the last known post-office address of the party to whom it is addressed, but no notice of cancellation shall be effective as to a claim for injury occurring previous thereto.

Added by L. 1910, Ch. 352, § 3.

§ 211. Reports of compensation plan.— Each employer who shall sign with any employee a consent to the plan shall, within thirty days thereafter, file with the commissioner of labor a statement thereof, signed by such employer, which shall show (a) the name of the employer and his post-office address, (b) the name of the employee and his last known post-office address, (c) the date of and office where the original consent is filed, (d) the weekly wage of the employee at the time the consent is signed; unless such statement is duly filed, such consent of the employee shall not be a bar to any proceeding at law commenced by the employee against the employer.

Added by L. 1910, Ch. 352, § 3.

§ 212. Reports by employer.— Each employer of labor in this state who shall have entered into the plan with any employee shall, on or before the first day of January, nineteen hundred and eleven, and thereafter and at such times as may be required by the commissioner of labor, make a report to such commissioner of all amounts, if any, paid by him under such plan to injured employees, stating the name of such employees, and showing separately the amounts paid under agreement with the employees, and the amounts paid after proceedings at law, and the proceedings at law under the plan then pending. Such reports shall be verified by the employer or a duly authorized agent in the same manner as affidavits.

Added by L. 1910, Ch. 352, § 3.

NOTE.— Sections 215-219g, inclusive, embraced in Article 14a, added by L. 1910, Ch. 674, and constituting the so-called Workmen's Compensation in Certain Dangerous Employments, are omitted in this book. Article 14a was declared unconstitutional in *Ives v. South Buffalo Ry. Co.*, 201 N. Y. 271.

GENERAL BUSINESS LAW

Laws of 1909, Chapter 25, constituting Chapter Twenty of the
Consolidated Laws.

ARTICLE XXII.

Monopolies.

SECTION 340. Contracts for monopoly illegal and void.

341. Penalty.

342. Action to restrain and prevent.

343. Procedure; application for order.

344. Order for examination.

345. No person excused from answering.

346. Powers of referee.

§ 340. Contracts for monopoly illegal and void.— Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented; is hereby declared to be against public policy, illegal and void.

§ 341. Penalty.— Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do

any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine not exceeding twenty thousand dollars. An indictment based on a violation of any of the provisions of this section must be found within two years after its commission.

Amended by L. 1910, Ch. 633.

§ 342. Action to restrain and prevent.—The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 343. Procedure; application for order.—Whenever the attorney-general has determined to commence an action or proceeding under this article, he may present to any justice of the supreme court, before beginning such action/or proceeding, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement or combination in violation of this article; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show upon his information

and belief that the testimony of such person is material and necessary. The provisions of the code of civil procedure, chapter nine, title three, article one, relating to the application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office within this state, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

§ 344. Order for examination.—The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an indorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such indorsement, shall be sufficient notice for the attendance of witnesses. Such indorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses

subpoenaed to attend trials of civil actions in a court of record in this state.

§ 345 No person excused from answering.—No person shall be excused from attending and testifying, or from producing any books, papers or other documents before any court, magistrate or referee, upon any investigation, proceeding or trial, pursuant to or for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence, documentary or otherwise. And no testimony so given or produced shall be received against him upon any criminal investigation, proceeding or trial.

Amended by L. 1910, Ch. 394, in effect June 6, 1910.

§ 346. Powers of referee.—A referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this article for non-attendance or refusal to be sworn or testify or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

ARTICLE XXV.**Interest and Usury.**

Section 370. Rate of interest.

371. Usury forbidden.

372. Recovery of excess.

373. Usurious contracts void.

374. Corporations prohibited from interposing defense of usury.

375. Transfer of cause of action for usury.

376. Return of excess a bar to further penalties.

377. Borrower bringing an action need not offer to repay.

378. How interest calculated.

379. Interest permitted on advances on collateral security.

380. Brokerage on loans.

381. Recovery of excess.

382. Restitution a bar to further penalties.

§ 370. **Rate of interest.**—The rate of interest upon the loan or forbearance of any money, goods or things in action, except as otherwise provided by law, shall be six dollars upon one hundred dollars, for one year, and at that rate, for a greater or less sum, or for a longer or shorter time.

§ 371. **Usury forbidden.**—No person or corporation shall, directly or indirectly, take or receive in money, goods or things in action, or in any other way, any greater sum or greater value, for the loan or forbearance of any money, goods or things in action, than is above prescribed.

§ 372. **Recovery of excess.**—Every person who, for any such loan or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives, may recover in an action against the person who shall have taken or received the same, and his personal representatives, the amount of the money so paid or value delivered, above the rate aforesaid, if such action be brought within one year after such payment or delivery.

If such suit be not brought within the said one year, and prosecuted with effect, then the said sum may be sued for and recovered with costs, at any time within three years after the said one year, by any overseer of the poor of the town where such payment may have been made, or by any county superintendent of the poor of the county, in which the payment may have been made.

§ 373. Usurious contracts void.—All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever, except bottomry and respondentia bonds and contracts, and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured or agreed to be reserved or taken, any greater sum, or greater value, for the loan or forbearance of any money, goods or other things in action, than is above prescribed, shall be void.

Whenever it shall satisfactorily appear by the admissions of the defendant, or by proof, that any bond, bill note, assurance, pledge, conveyance, contract, security or any evidence of debt, has been taken or received in violation of the foregoing provisions, the court shall declare the same to be void, and enjoin any prosecution thereon; and order the same to be surrendered and canceled.

§ 374. Corporations prohibited from interposing defense of usury.—No corporation shall hereafter interpose the defense of usury in any action. The term corporation, as used in this section, shall be construed to include all associations, and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.

§ 375. Transfer of cause of action for usury.—A cause of action to cancel, or otherwise affect, an instrument executed, or an act done, as security for a usurious loan

or forbearance, can be transferred, where the instrument or act creates a specific charge upon property, which is also transferred in disaffirmance thereof, and not otherwise; but, in that case, the transferee does not succeed to the right, conferred by statute upon the borrower, to procure relief, without paying, or offering to pay, any part of the sum or thing loaned.

§ 376. Return of excess a bar to further penalties.—Every person who shall repay or return the money, goods or other thing so taken, accepted or received, or the value thereof, shall be acquitted and discharged from any other or further forfeiture, penalty or punishment, which he may have incurred, by taking or receiving the money, goods or other thing so repaid, or returned, as aforesaid.

§ 377. Borrower bringing an action need not offer to repay.—Whenever any borrower of money, goods or things in action, shall begin an action for the recovery of the money, goods or things in action taken in violation of the foregoing provisions of this article, it shall not be necessary for him to pay or offer to pay any interest or principal on the sum or thing loaned; nor shall any court require or compel the payment or deposit of the principal sum or interest, or any portion thereof, as a condition of granting relief to the borrower in any case of usurious loans forbidden by the foregoing provisions of this article.

§ 378. How interest calculated.—Whenever, in any statute, act, deed, written or verbal contract, or in any public or private instrument whatever, any certain rate of interest is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest shall be calculated at the rate mentioned, by the year, in the same manner as if the words "per annum" or "by the year" had been added to such rate.

§ 379. Interest permitted on advances on collateral security.—In any case hereafter in which advances of money, repayable on demand, to an amount not less than five thousand dollars, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any sum to be agreed upon in writing, by the parties to such transaction.

§ 380. Brokerage on loans.—No person shall, directly or indirectly, take or receive more than fifty cents for a brokerage, soliciting, driving or procuring the loan or forbearance of one hundred dollars, and in that proportion for a greater or less sum, except loans on real estate security; nor more than thirty-eight cents for making or renewing any bond, bill, note or other security given for such loan or forbearance, or for any counter bond, bill, note or other security concerning the same.

§ 381. Recovery of excess.—Every person who shall pay, deliver or deposit any money, property or thing in action, over and above the rate aforesaid, and his personal representatives may, within one year after such payment, delivery or deposit, sue for and recover the same of the person so taking or receiving such money, property or thing in action, or of his personal representatives.

In case such suit shall not be brought within the time above prescribed, in good faith, or in case it shall be discontinued, or wilfully delayed, then the overseers of the poor of the city or town where the offense was committed, may, within one year after such neglect, discontinuance or delay, sue for and recover the money, property or thing in action, so received, delivered or deposited, from the person receiving the same, or his per-

sonal representatives, for the use of the poor of the county.

§ 382. Restitution a bar to further penalties.—Upon the repayment and return of the money, property or other thing so illegally received, with the payment of the costs of such suit, the person making such return shall be acquitted and discharged from any other punishment, forfeiture or penalty, which he may have incurred by reason of having so illegally received such money, property or other thing so returned.

LIEN LAW

Laws of 1909, Chapter 38, constituting Chapter Thirty-three of the Consolidated Laws.

§ 42. Regulating loans of money on salaries.— 1. Any person or persons, firm, corporation or company, who shall after the passage of this act, make to any employee an advance of money, or loan, on account of salary or wages due or to be earned in the future by such individual, upon an assignment or note covering such loans or advances, shall not acquire any right to collect or attach the same while in the possession or control of the employer, unless such note or assignment is dated on the same day on which such loan is actually made, and unless within a period of three days after such loan and assignment or note are actually made the party making such loan or loans and taking such assignment or notes shall have filed with the employer or employers of the individual or individuals so assigning his present or prospective salary or wages, a duly authenticated copy of such agreement or assignment or notes under which the claim is made. The day of making a loan or advance within the meaning of this act shall be deemed to be the day when the money is delivered to the borrower, and the subsequent execution of an instrument by virtue of a power of attorney shall not be deemed to affect the time of the actual making of such loan or advance.

2. No action shall be maintained in any of the courts of this state, brought by the holder of any such contract, assignment or notes, given by an employee for moneys loaned on account of salary or wages, in which it is sought to charge in any manner the employer or em-

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ployers, unless a copy of such agreement, assignment or notes, together with a notice of lien, was duly filed with the employer or employers of the person making such agreement, assignment or notes, by the person or persons, corporation or company making said loan within three days after the said loan was actually made and the said agreement, assignment or notes were given as provided in the previous section.

3. Every person, firm or corporation engaged in or seeking to engage in the business of loaning money upon security of an assignment of salary or wages either earned or to be earned shall, on or before the first day of July next ensuing the passage of this act, file with the clerk of the county in which said person, firm or corporation has its place of business or transacts business a statement under oath containing the name and residence of the individual; or in case of a firm, the names and residences of the partners; or in the case of a corporation, the names and residences of the officers and directors, managers or trustees of such corporation; and the place or places where said business is transacted by such an individual, firm or corporation. After July the first next ensuing the passage of this act it shall be unlawful to engage in the business of loaning money in the manner set forth in this act without, prior to engaging in such business, filing a statement as provided in this act.

4. The several county clerks of this state shall keep an alphabetical index of all persons, firms or corporations filing certificates provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate, duly certified to by the county clerk in whose office the same was filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained.

5. After the passage of this act, no person shall directly or indirectly receive or accept for the use and sale of his personal credit or for making any advance or loan of money, either wholly or partly in anticipation of sal-

ary or wages due or to be earned, a greater sum than at the rate of eighteen per centum per annum on the amount of such loan or advance, either as a bonus, interest or otherwise, or under the guise of a charge for investigating the status of a person applying for such loan or advance, drawing of papers or other service in connection with such loan or advance, except such charges as are now permitted by section three hundred and eighty of chapter twenty-five of the laws of nineteen hundred and nine, known as the "general business law."

6. Every person, firm, corporation, director, agent, officer or member thereof who shall violate any provision of this act, directly or indirectly, or assent to such violation, shall be guilty of a misdemeanor.

Amended by L. 1911, Ch. 626, in effect September 1, 1911.

§ 45. Notice of liens upon merchandise or the proceeds thereof to secure loans or advances.— Liens upon merchandise or the proceeds thereof created by agreement for the purpose of securing the repayment of loans or advances made or to be made upon the security of said merchandise and the payment of commissions or other charges provided for by such agreement, shall not be void or presumed to be fraudulent or void as against creditors or otherwise, by reason of want of delivery to or possession on the part of the lienor, whether such merchandise shall be in existence at the time of the creation of the lien or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the person creating the lien, provided there shall be placed and maintained in a conspicuous place at the entrance of every building or place in or at which such merchandise, or any part thereof, shall be located, kept or stored, a sign on which is printed in legible English, the name of the lienor and a designation of said lienor as lienor, factor or consignee, and provided further that a notice of the lien is filed, stating:

1. The name of the lienor, and the name under which the lienor does business, if an assumed name; the prin-

cipal place of business of the lienor within the state; and if the lienor is a partnership or association the names of the partners, and if a corporation the state under whose laws it was organized.

2. The name of the person creating the lien, and the interest of such person in the merchandise, as far as known to the lienor.

3. The general character of merchandise subject to the lien, or which may become subject thereto and the period of time during which such loans or advances may be made under the terms of the agreement creating the lien.

Such notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his knowledge. It must be filed with the officer designated in section two hundred and thirty-two of the lien law, in every town or city where the merchandise subject to the lien, or any part thereof, is or at any time shall be located, kept or stored, and also in the town or city where the principal office or place of business of the lienor within the state is or at any time shall be located. Such officers shall file every such notice presented to them for that purpose and shall indorse thereon its number and the time of its receipt. They shall enter in a book provided for that purpose, in separate columns, the names of the parties named in each notice so filed under the head of "owners" and "lienors," the number of such notice and the date of the filing thereof, and the general character of the merchandise as therein stated. The names of the persons creating the liens, as stated in the notice, shall be arranged in alphabetical order under the head of "owners." Such officers at the time of filing such notice shall upon request issue to the person filing the same a receipt in writing, containing the substance of the entries made or to be made as hereinabove provided. Such officers shall be entitled to receive for their services hereunder, fees at the same rates as provided in section two hundred and thirty-four of the lien law.

Such notice may be filed at any time after the making of the agreement, and shall be effectual from the time of the filing thereof as against all rights of third parties thereafter arising. Upon the payment or satisfaction of indebtedness secured by any lien specified in this section, the lienor or his legal representative, upon the request of any person interested in the said merchandise, must sign and acknowledge a certificate setting forth such payment or satisfaction. The officer or officers with whom the notice of lien is filed must, on receipt of such certificate or a copy thereof certified as required by law, file the same in his office and write the word "discharged" in the book where the notice of lien is entered opposite the entry thereof, and the lien is thereby discharged.

If the agreement creating such lien shall also give the lienor a right to or lien upon accounts receivable resulting from or which may result from a sale or sales of the merchandise subject to the lien, or of part of such merchandise, such right or lien shall not be void or ineffectual as against creditors or otherwise, by reason of want of possession of any such account on the part of the lienor or by reason of failure to make or deliver a further assignment of any such account, provided a bill, invoice, statement or notice shall be mailed, sent or delivered to the person owing such account receivable, stating or indicating that the account is payable to the lienor, and such mailing, sending or delivery of such bill, invoice, statement or notice shall have the same effect as a formal assignment of such account to the lienor named therein.

Added by L. 1911, Ch. 326, in effect June 13, 1911.

§ 231. Corporate mortgages against real and personal property.—Mortgages creating a lien upon real and personal property, executed by a corporation as security for the payment of bonds issued by such corporation, or by any telegraph, telephone or electric light corporation, and recorded as a mortgage of real property in each county where such property is located or through which the line

of such telegraph, telephone or electric light corporation runs, need not be filed or refiled as chattel mortgages.

§ 232. **Where filed.**—An instrument, or a true copy thereof, if intended to operate as a mortgage of a canal boat, steam tug, scow or other craft, or of the appurtenances thereto, navigating the canals of this state, must be filed in the office of the comptroller, and need not be filed elsewhere. Every other chattel mortgage, or an instrument intended to operate as such, or a true copy thereof, must be filed in the town or city where the mortgagor, if a resident of the state, resides at the time of the execution thereof, and if not a resident, in the city or town where the property mortgaged is at the time of the execution of the mortgage. If there is more than one mortgagor, the mortgage, or a certified copy thereof, must be filed in each city or town within the state where each mortgagor resides at the time of the execution thereof. In the city of New York, such instrument must be filed as follows, namely: In the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the office of the clerk of the county of Richmond, and in the borough of Manhattan and the borough of the Bronx in said city, in the office of the register of the city and county of New York. In every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it must be filed therein. If the chattels mortgaged are in the city of New York at the time of the execution of the mortgage, the mortgage or a true copy thereof must be filed in the county where the mortgagor alleges to reside at the time of the execution of the mortgage, and in the county where the property is situated.

NOTE.—See § 9, Lien Law, as to contents of notice of mechanic's lien; and see § 235, Lien Law, concerning refiling of chattel mortgages.

NEGOTIABLE INSTRUMENTS LAW

Laws of 1909, Chapter 43, constituting Chapter Thirty-eight of the Consolidated Laws.

§ 41. **Effect of indorsement by infant or corporation.**—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 72. **Effect of instrument drawn or indorsed to a person as cashier.**—Where an instrument is drawn or indorsed to a person as “cashier” or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

§ 332. **How negotiable bonds are made non-negotiable.**—The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor’s place of residence.

PERSONAL PROPERTY LAW

Laws of 1909, Chapter 45, constituting Chapter Forty-one of the Consolidated Laws.

§ 33. **Validity of certain agreements made without consideration.**—An agreement for the purchase, sale, transfer or delivery of a certificate or other evidence of debt, issued by the United States or by any state, or a municipal or other corporation, or of any share or interest in the stock of any bank corporation or joint-stock association, incorporated or organized under the laws of the United States or of any state, is not void or voidable, for want of consideration, or because of the non-payment of consideration, or because the vendor, at the time of making such contract, is not the owner or possessor of the certificate or certificates or other evidence of debt, share or interest.

REAL PROPERTY LAW

Laws of 1909, Chapter 52, constituting Chapter Fifty of the Consolidated Laws.

§ 309. Acknowledgment by corporation and form of certificate.— The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York, }
County of } ss.:

On the day of in the year, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides in; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)
If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

APPENDIX

JOINT-STOCK ASSOCIATION LAW

Laws of 1909, Chapter 34, constituting Chapter Twenty-nine of the Consolidated Laws.

- Article 1. Short title; definitions (§§ 1, 2).
2. General provisions (§§ 3-8).
3. Laws repealed; when to take effect (§§ 20, 21).

ARTICLE 1

Short Title; Definitions

- Section 1. Short title.
2. Definitions.

§ 1. Short title.—This chapter shall be known as the “Joint-Stock Association Law.”

§ 2. Definitions.—As used in this chapter, the term “joint-stock association” includes every unincorporated joint-stock association, company or enterprise having written articles of association and capital stock divided into shares, but does not include a corporation; and the term “stockholder” includes every member of such an association.

ARTICLE 2

General Provisions

- Section 3. Contents of articles of association.
4. Certificate to be filed within sixty days and annually thereafter; penalty; evidence.
5. Dissolution.
6. Power to take and convey real property.
7. Changing articles of association.
8. Proceeding to mortgage, lease or sell real estate.

§ 3. Contents of articles of association.—The articles of association of a joint-stock association may:

1. Provide that the death of a stockholder thereof, or the transfer of his shares of stock therein, shall not work a dissolution of the association;

2. Prescribe the number of its directors, not less than three, to have the sole management of its affairs;

3. Contain any other provision for the management of its affairs not inconsistent with law.

§ 4. Certificate to be filed within sixty days and annually thereafter; penalty; evidence.— Every joint-stock association transacting business within this state shall, within sixty days after its formation, and in each January thereafter, file with the secretary of state, and with the clerk of the county in which its principal business is carried on, a written certificate, signed and verified by its president and treasurer, stating the name and date of organization of such association, the number of its stockholders, the names and places of residence of its officers, and its principal place of business. Such certificates shall be recorded in such offices respectively. Any such certificate, the record thereof, or a certified copy of such certificate or record shall be presumptive evidence of the truth of all facts therein stated against such association, its officers and stockholders. The officers of a joint-stock association who fail to comply with the provisions of this section shall be jointly and severally liable to pay to the people of this state a penalty of fifty dollars for each day such failure continues.

§ 5. Dissolution.— A joint-stock association shall not be dissolved except in pursuance of its articles of association, or by consent of all its stockholders, or by judgment of a court for fraud in its management, or for good cause shown.

§ 6. Power to take and convey real property.— A joint-stock association, in the name of its president, as such president, may purchase, take, hold and convey such real property only,

1. As may be necessary for its immediate accommodation in the convenient transaction of its business.

2. As may be mortgaged to it in good faith by way of security for loans made by or moneys due to it.

3. As it may purchase at sales under judgments, decrees or mortgages held by it.

§ 7. Changing articles of association.—Any change in the articles of association of a joint-stock association not inconsistent with law may be made with the consent of all its stockholders, or otherwise, as the articles of association may provide. Unless the articles of association of a joint-stock association contain provisions to the contrary, its directors may be increased or reduced to not less than three; its capital stock may be increased or reduced; or the term of its existence may be extended, with the consent of its stockholders owning at least two-thirds of its stock issued and outstanding, on the following terms and conditions: The consent of the requisite number of stockholders must be given by vote, or by writing presented and filed, at a regular or regularly called special meeting. Notice of the time and place of such meeting, with notice of the proposed change, must be personally served on each stockholder of the association at least thirty days before the meeting, or by mailing it to such stockholder at his last-known post-office address at least sixty days before the meeting. The amount of its capital stock shall not be reduced below the amount of its paid-up capital stock, nor shall it be reduced if the liabilities of the association exceed its assets.

§ 8. Proceeding to mortgage, lease or sell real estate.—Whenever any joint-stock association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had as prescribed for corporations in article four of the general corporation law.

Former § 3390, Code Civil Procedure. For remainder of that section, see General Corporation Law, § 70.

ARTICLE 3

Laws Repealed; When to Take Effect

Section 20. Laws repealed.

21. When to take effect.

§ 20. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 21. **When to take effect.**—This chapter shall take effect immediately.*

SCHEDULE OF LAWS REPEALED

Laws of	Chapter	Section
1854.....	245.....	All
1867.....	289.....	All
1881.....	599.....	All
1885.....	505.....	All
1894.....	235.....	All
Code Civil Procedure.....		3390-3397, part relating to joint-stock associations

* Became a law February 17, 1909.

NOTE.—See § 438, Code of Civil Procedure, *ante*, for manner of service of summons; § 374, General Business Law, *ante*, regarding defense of usury; § 1272, Penal Law, as to payment of wages.

GENERAL CONSTRUCTION LAW

Laws of 1909, Chapter 27, constituting Chapter Twenty-two of the Consolidated Laws.

Article 1. Short title (§ 1).

2. Meaning of terms (§§ 10-58).
3. Ancient statutes and resolutions (§§ 70-72).
4. References, titles and head notes (§§ 80, 81).
5. Effect of repeals (§§ 90-96).
6. Effect of consolidated laws (§§ 100, 101).
7. Application of chapter (§ 110).
8. Laws repealed; when to take effect (§§ 120, 121).

ARTICLE 1

Short Title

Section 1. Short title.

§ 1. Short title.—This chapter shall be known as the “General Construction Law.”

ARTICLE 2

Meaning of Terms

Section 10. Acknowledge and acknowledgment.

11. Acknowledgment or proof of instrument.
12. Affidavit.
13. Adjournment of meeting.
14. Bond and undertaking.
15. Chattels.
16. Choose.
17. Civil code and criminal code.
18. Consolidated laws.
19. Day, calendar.
20. Day, computation.
21. Folio.
22. Gender.
23. Heretofore and hereafter.
24. Holiday and half holiday.
25. Holiday in contractual obligations.
26. Judge.
27. Last, preceding, next and following.
28. Lunatic and lunacy.
29. Men.
30. Month, computation.
31. Month in statute, contract and public or private instrument.

Section 32. Municipal officers.

33. Notice.
34. Now.
35. Number, singular and plural.
36. Oath, affidavit and swear.
37. Person.
38. Property.
39. Property, personal.
40. Property, real.
41. Quorum and majority.
42. Register of county.
43. Seal of court, public officer or corporation.
44. Seal, private.
45. Seal, private as corporate seal.
46. Signature.
47. State.
48. Tense, present.
49. Territory.
50. Time, computation.
51. Time, night.
52. Time, standard.
53. Time, use of standard.
54. Village.
55. Women.
56. Writing and written.
57. Year, common and leap.
58. Year in statute, contract and public or private instrument.

§ 10. Acknowledge and acknowledgment.—The terms acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, include a compliance with the provisions of the next section by either such proof or acknowledgment.

§ 11. Acknowledgment or proof of instrument.—When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

§ 12. **Affidavit.**—When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

§ 13. **Adjournment of meeting.**—Any meeting referred to in section forty-one of this chapter may be adjourned by a less number than a quorum.

§ 14. **Bond and undertaking.**—A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

§ 15. **Chattels.**—The term chattels includes goods and chattels.

§ 16. **Choose.**—The term choose includes elect and appoint.

§ 17. **Civil code and criminal code.**—The term civil code means the code of civil procedure. The term criminal code means the code of criminal procedure.

§ 18. **Consolidated Laws.**—The term Consolidated Laws shall mean the compilation of the statutes prepared by the board of statutory consolidation and the amendments thereof.

§ 19. **Day, calendar.**—A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day.

§ 20. **Day, computation.**—A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified period

of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.

Amended by L., 1910, Ch. 347, §§ 1, 2.

§ 21. **Folio.**—A folio is one hundred words, counting as a word each figure necessarily used.

§ 22. **Gender.**—Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or to a board or other body or assemblage of persons; and, when the sense so indicates, words of the neuter gender may refer to any gender.

§ 23. **Heretofore and hereafter.**—Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the time such provision takes effect.

§ 24. **Holidays; half-holiday.**—The term holiday includes the following days in each year: the first day of January, known as New Year's day; the twelfth day of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as memorial day; the fourth day of July, known as independence day; the first Monday of September, known as labor day; the twelfth day of October, known as Columbus day, and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this state as a day of general thanksgiving, general fasting and prayer, or other general religious observances. The term half-holiday includes the period from noon to midnight of each Saturday which is not a holiday.

Amended by L. 1909, Ch. 112.

§ 25. **Holiday in contractual obligations.**—Where a contract by its terms requires the payment of money or the performance of a condition on a public holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed in accordance with the terms of the contract.

§ 26. **Judge.**—The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

§ 27. **Last, preceding, next and following.**—A reference to the last or preceding section, or other provision of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

§ 28. **Lunatic and lunacy.**—The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

§ 29. **Men.**—The term men includes boys.

§ 30. **Month, computation.**—A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

§ 31. **Month in statute, contract and public or private instrument.**—In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument or by law, the term month means a calendar month and not a lunar month.

§ 32. **Municipal officers.**—A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

§ 33. **Notice.**—When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

§ 34. **Now.**—The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or to the person in office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

§ 35. **Number, singular and plural.**—Words in the singular number include the plural, and in the plural number include the singular.

§ 36. **Oath, affidavit and swear.**—The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated. The term swear includes every mode authorized by law for administering an oath.

§ 37. **Person.**—The term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state or any other state, government or country which may lawfully own property in the state.

§ 38. **Property.**—The term property includes real and personal property.

§ 39. **Property, personal.**—The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership.

Oil wells and all fixtures connected therewith, situate on lands leased for oil purposes and oil interests, and rights held under and by virtue of any lease or contract or other right or license to operate for or produce petroleum oil, shall be deemed personal property for all purposes except taxation.

§ 40. **Property, real.**—The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

§ 41. **Quorum and majority.**—Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority of the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty.

§ 42. **Register of county.**—Any act done in pursuance of law by the register of a county shall be deemed to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded, as the case may be, in the office of the clerk of such county. The term county clerk when used in relation to conveyances of real property or the filing or recording of instruments which are or may be filed in the office of the register of a county, shall include the register of each county in which there is a register.

§ 43. **Seal of court, public officer or corporation.**—A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be

sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper, or other similar substance affixed thereto by mucilage or other adhesive substance.

§ 44. **Seal, private.**—The private seal of a person, other than a corporation, to any instrument or writing shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word “seal,” or the letters “L. S.,” opposite the signature.

§ 45. **Seal, private as corporate seal.**—An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

§ 46. **Signature.**—The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

§ 47. **State.**—The term state, when used generally to include every state of the United States, includes also every territory of the United States and the District of Columbia.

§ 48. **Tense, present.**—Words in the present tense include the future.

§ 49. **Territory.**—The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

§ 50. **Time, computation.**—Time shall continue to be computed in this state according to the Gregorian or new style. The first day of each year after the year seventeen hundred and fifty-two is the first day of January, according to such style.

§ 51. **Time, night.**—Night time includes the time from sunset to sunrise.

§ 52. **Time, standard.**—The standard time throughout this state is that of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and official proceedings, shall be regulated thereby.

§ 53. **Time, use of standard.**—Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to the standard time.

§ 54. **Village.**—The term village means an incorporated village.

§ 55. **Women.**—The term women includes girls.

§ 56. **Writing and written.**—The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument.

§ 57. **Year, common and leap.**—For the purpose of computing and reckoning the days of the year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bissextile or leap year consisting of three hundred and sixty-six days, unless such number of the year is a multiple of one hundred and the first two figures thereof treated as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty-five days.

§ 58. **Year in statute, contract and public or private instrument.**—The term year in a statute, contract, or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day. In a statute, contract or public or private instrument, the term year means twelve months, the term half year, six months, and the term a quarter of a year, three months.

ARTICLE 3

Ancient Statutes and Resolutions

Section 70. Statutes of England and Great Britain inoperative in this state.

71. Acts of the legislature of the colony of New York inoperative.

72. Resolutions of the congress of the colony and the convention of New York inoperative.

§ 70. Statutes of England and Great Britain inoperative in this state.—A statute of England or Great Britain shall not be deemed to have had any force or effect in this state since May first, seventeen hundred and eighty-eight.

§ 71. Acts of the legislature of the colony of New York inoperative.—Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this state since December twenty-ninth, eighteen hundred and twenty-eight.

§ 72. Resolutions of the congress of the colony and the convention of New York inoperative.—The resolutions of the congress of the colony of New York and of the convention of the state of New York, shall not be deemed to be the laws of this state hereafter.

ARTICLE 4

References, Titles and Head Notes

Section 80. References to repealed provisions.

81. Titles and head notes.

§ 80. References to repealed provisions.—If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision.

§ 81. Titles and head notes.—If the title of any article or other division of a statute, or the head note of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new

section having a new head note be added to a statute, the corresponding title or head note, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to be correspondingly amended or repealed, although there be no express reference thereto.

ARTICLE 5

Effect of Repeals

Section 90. Effect of the repeal of a repealing statute.

91. Effect of the repeal of a statute upon amendments thereof.

92. Effect of the repeal of an amending statute.

93. Effect of repealing statute upon existing rights.

94. Effect of repealing statute upon pending actions and proceedings.

95. Effect of the repeal of a statute by another statute substantially re-enacting the former.

96. Effect of hyphen in schedule of repeals.

§ 90. Effect of the repeal of a repealing statute.—The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision.

§ 91. Effect of the repeal of a statute upon amendments thereof.—The repeal by the Consolidated Laws of a statute includes a statute amendatory of the statute repealed.

§ 92. Effect of the repeal of an amending statute.—The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended.

§ 93. Effect of repealing statute upon existing rights.—The repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

§ 94. Effect of repealing statute upon pending actions and proceedings.— Unless otherwise specially provided by law, all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

§ 95. Effect of the repeal of a statute by another statute substantially re-enacting the former.— The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, modified or amended according to the language employed, and not as new enactments.

§ 96. Effect of hyphen in schedule of repeals.— When two numbers in a schedule of repeals of the Consolidated Laws are connected by a hyphen both such numbers are included as well as all intermediate numbers.

ARTICLE 6

Effect of Consolidated Laws

Section 100. Effect of consolidation upon laws passed at same session or before consolidation takes effect.

101. Effect of consolidated laws on penal law and civil and criminal codes.

§ 100. Effect of consolidation upon laws passed at same session or before consolidation takes effect.— No provision of any chapter of the consolidation of the general laws, of which this chapter is a part, shall supersede or repeal by implication any law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

§ 101. **Effect of consolidated laws on penal law and civil and criminal codes.**—The Consolidated Laws shall not be construed to amend, repeal or otherwise affect any provision of the penal law, code of civil procedure or code of criminal procedure unless expressly so stated.

ARTICLE 7

Application of Chapter

Section 110. Application of chapter.

§ 110. **Application of chapter.**—This chapter is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

ARTICLE 8

Laws Repealed; When to Take Effect

Section 120. Laws repealed.

121. When to take effect.

§ 120. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 121. **When to take effect.**—This chapter shall take effect immediately.*

SCHEDULE OF LAWS REPEALED.

Revised Statutes..	Part 1, chapter 8, title 8, section	16
Revised Statutes..	Part 1, chapter 19, title 1, sections	1-5
Revised Statutes..	Part 2, chapter 4, title 2, section	3
Revised Statutes..	Part 2, chapter 4, title 3, section	9
Revised Statutes..	Part 3, chapter 3, title 1, section	10
Revised Statutes..	Part 3, chapter 7, title 3, article	
	7, sections	61, 62
Revised Statutes..	Part 3, chapter 8, title 17, section	27
Revised Statutes..	Part 3, chapter 10, title 4, section	4
Revised Statutes..	Part 4, chapter 2, title 8, section	16

* Became a law February 17, 1909.

Laws of	Chapter	Section
1788.....	46.....	37
1801.....	90.....	28
R. L. 1813...	56.....	30, second sentence
1828.....	20.....	9-11 (2d Meet.)
1828.....	21.....	2-15 (2d Meet.)
1830.....	320.....	65-67
1848.....	197.....	1
1849.....	261.....	All
1857.....	536.....	3
1865.....	146.....	All
1870.....	370.....	All
1872.....	544.....	All
1873.....	577.....	All
1873.....	639.....	All
1874.....	321.....	All
1875.....	27.....	All
1876.....	448.....	29, 788, 960
1877.....	416.....	1, ¶¶ 176, 214
1877.....	466.....	27
1880.....	178.....	1, pt. adding § 3343, subds. 6-8, 15, 17, 21-24 to L. 1876, Ch. 448.
1881.....	90.....	All
1881.....	442.....	955-957
1881.....	676.....	261, 500, 718, subds. 9-15
1882.....	384.....	1, pt. amending L. 1881, Ch. 676, § 718, subds. 9-15
1883.....	372.....	All
1884.....	14.....	All
1886.....	21.....	20
1887.....	289.....	All
1892.....	677.....	All, except last sentence of § 24
1894.....	447.....	All
1894.....	448.....	All
1895.....	603.....	All
1897.....	614.....	1, except part providing that public offices shall be kept open on all week days; 2, 3

Laws of	Chapter	Section
1902.....	39.....	1, except part providing that public offices shall be kept open on all week days
1907.....	300.....	All

LAWS OF 1909, CHAPTER 596.

AN ACT to prescribe the rules for the construction of the consolidated laws and code amendments reported to the legislature under and in pursuance to the provisions of chapter six hundred and sixty-four of the laws of nineteen hundred and four, and also for the construction of chapter two hundred and forty of the laws of nineteen hundred and nine.

Became a law May 29, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. In construing the consolidated laws and the amendments to the code of civil procedure and the code of criminal procedure reported to the legislature by the board of statutory consolidation constituted under the provisions of chapter six hundred and sixty-four of the laws of nineteen hundred and four, entitled "An act to provide for the consolidation of the statutes of the state," and enacted by the legislature of nineteen hundred and nine, and in construing the act amendatory thereof, known as chapter two hundred and forty of the laws of nineteen hundred and nine, for the purpose of determining the effect of any of the provisions or sections thereof on any other provision or section thereof, or on any special law theretofore enacted, the several provisions and sections of such laws and code amendments and said act amendatory thereof shall not be considered as having been enacted or re-enacted by the legislature at the time of the passage of the consolidated laws or such code amendments or said act amendatory thereof but as having been enacted as of the various times when such provisions and sections first became laws by any earlier statutes, provided, however, that when any provision of law after its first enactment by the legislature has been amended or re-enacted, then for the purpose of its construction for the determination of its effect on other sections or provisions of the consolidated laws, it shall be considered as

having been enacted at the date of such amendment or re-enactment. If in any such consolidated law and such amendments to the code of civil procedure and the code of criminal procedure as enacted by the legislature of nineteen hundred and nine or said act amendatory thereof there shall have been incorporated any provisions of law that have heretofore been superseded or impliedly repealed, the incorporation of any such provisions shall not be construed as a legislative intent to revive such superseded or repealed provisions, nor shall such incorporation in such consolidated laws be construed to indicate any legislative determination that such provisions had not been theretofore so superseded or repealed. The true purpose and intent of this act is to prescribe that the statute law of the state, so far as it has been reproduced in such consolidated laws and in such amendments to the code of civil procedure and the code of criminal procedure, and in said chapter two hundred and forty of the laws of nineteen hundred and nine, and all special laws in force at the time of the enactment of such consolidated laws, shall be of the same force and effect as they were before the enactment of such consolidated laws or code amendments or said act amendatory thereof.

§ 2. This act shall take effect immediately.

FEES

See § 26, Executive Law, Chapter 23, Laws of 1909, constituting
Chapter 18 of the Consolidated Laws.

Fees of Secretary of State.

§ 26. Fees.— The secretary of state shall collect the following fees:

1. For entering a caveat, twelve and a half cents.
 2. For searching the records in his office for any one year and for every other year in which such search is made, six cents.
 3. For a copy of any paper or record not required to be certified or otherwise authenticated by him, ten cents per folio.
 4. For a certified or exemplified copy of any law, record or paper, fifteen cents per folio, and one dollar additional for the certificate under seal of his office, attached thereto.
 5. For a certificate under the great seal of the state, one dollar.
 6. For recording a certificate, notice or other paper required to be recorded, except as otherwise provided by this section, fifteen cents per folio.
- * * * * * * * *
12. For filing and recording the original certificate of incorporation of a railroad corporation for the construction of a railroad in a foreign country, fifty dollars; for filing the original certificates of every other railroad corporation, twenty-five dollars; for filing the original certificate of any other stock corporation, ten dollars; for filing any original certificate of incorporation drawn under article three of the membership corporations law, ten dollars.

13. For filing the certificate of a foreign corporation desiring to do business in the state, ten dollars.

* * * * *

17. For a certificate under subdivision three of section nine of the general corporation law, ten dollars.

No fee shall be collected for copies of records furnished to public officers for use in their official capacity.

Fees of State Comptroller.

§ 42. Fees.—The comptroller shall collect the following fees:

1. For copies of all papers and records not required to be certified or otherwise authenticated by him, ten cents per folio.

2. For certified or exemplified copies of all records and papers, fifteen cents per folio.

3. For every certificate under the seal of his office, one dollar.

* * * * *

6. For searching the records in his office, on request, fifteen cents for the first book examined, and ten cents for each subsequent book.

Fees of County Clerks.

(SEE § 3304, CODE OF CIVIL PROCEDURE.

§ 3304. Fees of county clerks generally.—A county clerk is entitled, for the services specified in this section, except where another fee is allowed therefor by special statutory provision, to the following fees to be paid in advance:

For a copy of an order, record or other paper, entered or filed in his office, eight cents for each folio. * * *

For recording any instrument, which must or may legally be recorded by him, ten cents for each folio. * * *

For filing any paper required by law to be filed in his office, other than as expressly provided for in this section, six cents.

For organization, license, franchise tax, etc., payable to State Treasurer, see §§ 180-182 *et seq.*, Tax Law, *ante*.

TABLE OF FEES

Incorporation.

State Treasurer.—Tax of 1/20th of 1% (minimum \$5) on entire capitalization. Section 180, Tax Law. The tax should be paid in cash or by certified check, post-office or express money-order. Incorporation papers should not be sent to the State Treasurer, who will notify the Secretary of State of payment of tax, before the latter will pass upon papers.

Secretary of State.—For filing certificate of incorporation, \$10; recording same, 15 cents a folio; certified copy of certificate, 15 cents a folio and \$1 for seal; exemplified copy of certificate under great seal of the State, \$1, in addition to fees for certified copy.

County Clerk.—For filing duplicate original or certified copy of certificate of incorporation, 6 cents; recording same, 10 cents a folio; for certifying copies, 8 cents a folio.

Amending Certificate of Incorporation.

State Treasurer.—No tax, except in case of increase of capital stock, *q. v.*

Secretary of State.—No fee for filing. Recording fees same as on incorporation. (But see fees on change of name, *post.*)

County Clerk.—Fees are the same as on incorporation, above. (See fees on change of corporate name, *post.*)

Increase or Decrease of Capital Stock.

State Treasurer.—Tax of one-twentieth of one per cent. only on amount of increase of capital stock.

Secretary of State.—No fee for filing certificate of vote or consent of stockholders. Recording fees same as on incorporation, above.

County Clerk.—Fees are the same as on incorporation, above.

State Comptroller.—Fee for necessary certificate on decrease of capital stock, \$1. ●

Payment of One-Half of Capital Stock.

Secretary of State.—For recording certificate of payment, 15 cents a folio. No filing fee.

County Clerk.—For filing certificate of payment, 6 cents; for recording, 10 cents a folio.

Changing Corporate Name.

Secretary of State.—For certificate that proposed name is permissible (see § 60, General Corporation Law), \$1; for recording affidavit of publication of order (see § 64, General Corporation Law), 15 cents a folio. No fees for filing the petition for change of name, notice of motion or notice of adjournment thereof to reserve proposed name, or certified copy of order of court thereon, and affidavit of publication (§§ 62 and 63, General Corporation Law).

County Clerk.—For filing order of court on petition, 6 cents; recording same, 10 cents a folio (see § 64, General Corporation Law). For certified copy, as above, to file with Secretary of State, 8 cents a folio. Like fees for filing and recording affidavit of publication (see § 64, General Corporation Law).

Changing Place of Business.

See § 13, Stock Corporation Law.

Secretary of State.—No filing fees; recording fees, 15 cents a folio.

County Clerks.—For filing certificates, 6 cents each; for recording same, 10 cents a folio.

Consolidation.

The fees are the same as on incorporation, but the tax payable to the State is based only on the amount of capital stock in excess of the combined capitalization of the consolidated corporations.

Dissolution by Incorporators.

Secretary of State.—No fee for filing certificate required by § 220, General Corporation Law.

County Clerk.—For filing duplicate certificate, 6 cents; for recording, 10 cents a folio.

Dissolution by Directors and Stockholders.

Secretary of State.—No fee for filing consent, etc., to dissolution; for duplicate certificates of such filing and compliance with law, \$1 each. See § 221, General Corporation Law.

County Clerk.—For filing foregoing duplicate certificate, 6 cents; recording, 10 cents a folio.

Foreign Corporations.

See §§ 15 and 16, General Corporation Law.

State Treasurer.—License tax of one-eighth of one per cent. on capital employed in State within three months from date of commencement of business.

Secretary of State.—On filing papers for authority to do business, \$10; for certificate of compliance with law, \$1. No fee is charged

for filing revocation of agent's authority and designation of new agent, or notice of change of agent's office, required by § 16, General Corporation Law.

For service of process on foreign corporations through Secretary of State, in absence of designation of new agent, \$2. (See § 16, General Corporation Law.)

Merger.

See § 15, Stock Corporation Law.

Secretary of State.—For recording certificate required, 15 cents a folio. No fee for filing.

Mortgaging Corporate Property.

See § 6, Stock Corporation Law.

State Treasurer.—A tax of one-twentieth of one per cent. upon the amount of any increase of the capital stock for conversion of bonds. See § 180, Tax Law.

Secretary of State.—No fee for filing certificate authorizing increase of capital stock for conversion into bonds; recording fees, 15 cents a folio.

County Clerk.—For filing duplicate of above certificate, 6 cents; recording, 10 cents.

County Clerk or Register.—For filing certificate of vote or consent to mortgage, 6 cents each; for recording same, 10 cents a folio.

Reincorporation.

See § 4, Business Corporations Law.

State Treasurer.—No tax unless capital is increased.

Secretary of State.—No fee for filing certificate; 15 cents a folio for recording.

County Clerk.—Same fee as on incorporation.

Reorganization.

See § 9, Stock Corporation Law.

State Treasurer.—Same tax as on incorporation.

Secretary of State.—For filing certificate, \$10; for recording, 15 cents a folio.

County Clerk.—Same fees as on incorporation.

Reports.

No fees, except to

County Clerk.—For filing certificate or report of inspectors of election, 6 cents; recording fees, 10 cents a folio.

Table of Organization Expenses and Franchise Tax.

Capital	Organization Tax.	Total Expenses.*	Annual Franchise Tax.†
\$500.....	\$5 00.....	\$20 00.....	\$0 75
2,000.....	5 00.....	20 00.....	3 00
2,500.....	5 00.....	20 00.....	3 75
3,000.....	5 00.....	20 00.....	4 50
4,000.....	5 00.....	20 00.....	6 00
5,000.....	5 00.....	20 00.....	7 50
6,000.....	5 00.....	20 00.....	9 00
7,000.....	5 00.....	20 00.....	10 50
7,500.....	5 00.....	20 00.....	11 25
8,000.....	5 00.....	20 00.....	12 00
9,000.....	5 00.....	20 00.....	13 50
10,000.....	5 00.....	20 00.....	15 00
12,000.....	6 00.....	21 00.....	18 00
15,000.....	7 50.....	22 50.....	22 50
20,000.....	10 00.....	25 00.....	30 00
25,000.....	12 50.....	27 50.....	37 50
40,000.....	20 00.....	35 00.....	60 00
50,000.....	25 00.....	40 00.....	75 00
60,000.....	30 00.....	45 00.....	90 00
70,000.....	35 00.....	50 00.....	105 00
75,000.....	37 50.....	52 50.....	112 50
80,000.....	40 00.....	55 00.....	120 00
100,000.....	50 00.....	65 00.....	150 00
150,000.....	75 00.....	90 00.....	225 00
200,000.....	100 00.....	115 00.....	300 00
250,000.....	125 00.....	140 00.....	375 00
300,000.....	150 00.....	165 00.....	450 00
400,000.....	200 00.....	215 00.....	600 00
500,000.....	250 00.....	265 00.....	750 00
700,000.....	350 00.....	365 00.....	1,050 00
1,000,000.....	500 00.....	515 00.....	1,500 00
1,500,000.....	750 00.....	765 00.....	2,250 00
2,000,000.....	1,000 00.....	1,015 00.....	3,000 00
10,000,000.....	5,000 00.....	5,015 00.....	15,000 00

* "Total Expenses" include organization tax, fees to Secretary of State, etc.

† Six per cent. dividend basis. See § 182, Tax Law.

FEDERAL CORPORATION TAX LAW

AN ACT to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes.*

* * * * *

SEC. 38. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses

* See Chapter 6, Vol. 36, Statutes at Large. Became a law August 6, 1909.

actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided*, That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income

derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary

expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations,

or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

* * * * *

SEC. 42. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

[Approved. Signed five minutes after 5 o'clock P. M., August 5, 1909.]

FORMS.

FORM No. 1.

Certificate of Incorporation.

See § 2, Business Corporations Law.

CERTIFICATE OF INCORPORATION OF THE COMPANY.

We, the undersigned, desiring to form a *corporation under the laws of the State of New York, pursuant to the provisions of the Business Corporations Law, all of us being of full age, and [at least two-thirds] of us being citizens of the United States, and [at least one] of us being a resident [residents] of the State of New York, do hereby certify that:

1. The name of the proposed corporation is
2. The purpose [or purposes] of said corporation is [are]
3. The amount of capital stock is dollars, of which
dollars is common stock [and dollars is
preferred stock]. [State classification and character of preferred
stock, if any, thus]: Said preferred stock shall be entitled to an
annual cumulative dividend of per cent. (%) payable semi-
annually on the days of and of each
year before any dividends are paid on the common stock, and after
said common stock has in any one year received a dividend of
per cent. (%), to participate equally with said common stock, share
and share alike, in all further dividends that may be declared during
such year until said preferred stock has received a total dividend
for that year up to but not exceeding per cent. (%); and such
preferred stock shall be entitled to preference in the event of dis-
solution or liquidation of the corporation.
4. Said capital stock shall consist of shares, of the par
value of dollars [not less than five nor more than one
hundred dollars]. The amount of capital with which said corpora-
tion will begin business is [state amount, not less than five hundred
dollars].
5. The principal business office is to be located in the Borough of
 , City of , County of ; in the State of
New York.
6. The duration of said corporation is to be years.
[Perpetual if no term is stated. § 11, subd. 1, General Corporation
Law.]
7. The number of directors is [specify any number not less than
three].

* If it is desired to form a full liability corporation under § 6 of the Business Corporations Law, the words "full liability" should be inserted before "corporation."

8. The names and post-office addresses of the directors for the first year are as follows:

Names of Directors.	Post-office Addresses.
_____	_____
_____	_____
_____	_____

9. The names and post-office addresses of the subscribers to this certificate, and the number of shares of stock which each subscriber agrees to take are as follows:

Names of Subscribers.	Post-office Addresses.	No. of Shares Subscribed.
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. [Optional].—Pursuant to section 52 of the Stock Corporation Law, this Corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations.

IN WITNESS WHEREOF, we have made, signed and acknowledged this certificate, this _____ day of _____, 19 _____.

[At least three subscribers must sign.]

STATE OF NEW YORK, }
County of _____ } ss.:

On this _____ day of _____, 19 _____, before me personally came [*names of above incorporators*], to me known, and known to me to be the individuals described in and who executed the foregoing certificate of incorporation, and they severally acknowledged to me that they executed the same.

See notes under § 2, Business Corporations Law.

The certificate of incorporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law. See § 10, subd. 2, General Corporation Law.

Directors need not be stockholders if the certificate of incorporation or the stockholders' by-laws so provide. See § 25, Stock Corporation Law.

Directors' meetings may be held anywhere unless the certificate or the by-laws specifically require them to be held within the state. See § 2, Business Corporations Law.

Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled to one vote for every share of stock standing in his name on the books of the corporation. See § 23, General Corporation Law. This section has been construed by the Attorney-General to apply to common as well as to preferred stock. See note to § 24, General Corporation Law, *ante*.

In case cumulative voting is desired, add the following clause: "At all elections of directors of the corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number so to be voted for, or any two or more of them as he may see fit." See § 24, General Corporation Law.

Stock issued for the purchase of property may be authorized by the certificate of incorporation. See § 55, Stock Corporation Law.

In case it is desired to form a full liability corporation, the words "full liability" should be inserted in the first paragraph of the foregoing certificate before the word corporation. See § 6, Business Corporations Law.

The certificate of incorporation may provide for the issuance of partly paid stock. See § 60, Stock Corporation Law.

If the certificate of incorporation is to be recorded elsewhere than in the county in which it is executed, a county clerk's certificate of the authority of the officer taking the acknowledgment should be attached.

For provisions relative to filing and amount of fees, see Table of Fees, *post*.

GENERAL PURPOSE CLAUSES.

The purpose for which it is formed is to transact a general business; to manufacture, produce, buy, sell, import, export, lease, exchange, hire, let, invest in, mortgage, trade and deal in and otherwise acquire and dispose of goods, wares and merchandise and property of every kind, class, nature and description, except bills of exchange, and to do manufacturing, merchandising and mining of any and every kind.

To purchase, buy, sell, own, hold, maintain, work, develop, convey, mortgage, lease, let, hire and otherwise acquire, dispose of or deal in real estate, without limit as to amount or value within or without the State of New York, and in any part of the world, and any interest or right or rights therein, and to engage in the construction or repairing of buildings of all kinds.

The corporation shall have the power to carry on any of the above businesses or do any of the acts or things hereinbefore enumerated and have one or more offices and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in the State of New York, or in any other State, District, Territory, Colony or dependency, possessions or territorial acquisitions of the United States or in any foreign country, subject only to the requirements and restrictions of the laws of such other State, District, Territory, Colony or dependency, possession or territorial acquisition of the United States or of such foreign country.

In furtherance, and not in limitation of the general powers conferred by the laws of the State of New York,

It is hereby expressly provided that the company shall have also the following powers, that is to say:

(a) To the same extent as natural persons might or could do, to purchase, or otherwise, to hold, own, maintain, work, manufacture, mine, develop, to sell, convey, or otherwise dispose of, without limit as to amount within or without the State of New York, and in any part of the world, real estate and personal property and any interest or right therein.

(b) To acquire the good will, and to take over the whole or any part of the assets and liabilities of any person, firm or corporation engaged in a similar line of business, and to purchase the same for cash, stock of this corporation, bonds or otherwise.

(c) To apply for, obtain, register, purchase, lease or otherwise acquire and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of any and all copyrights, trade marks, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of or otherwise turn to account any such copyrights, trade marks, patents, concessions, processes and the like, or any such property, right or information so acquired; and with a view to the working and developing of the same to carry on any business whether manufacturing, merchandising, mining or otherwise.

(d) To do everything necessary, advisable or proper in order to accomplish any of the purposes and objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of, or interested in any property, and in general to carry on any business, whether merchandising, manufacturing, contracting, constructing, mining or otherwise.

(e) To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds or other evidences of indebtedness created by any other public or private corporation or corporations, and to give any guaranty or security for the payment of dividends or interest thereon or otherwise in relation thereto, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon to the same extent as natural persons might or could do.

(f) To do any or all things herein set forth to the same extent as natural persons might or could do, in any part of the world, as principals, agents, contractors, trustees or otherwise, and in general to engage in any and all lawful business whatever, necessary or convenient in connection with the business of said company, excepting that of an insurance, assurance, indemnity, guarantee, guaranty, title, savings, investment, loan, benefit, safe deposit or trust company, a banking company, a savings bank, bank or banking or other corporation intended to derive profit from the loan and use of money; a railroad company within the State, or any turnpike company; or any other company which shall need to possess the right of taking and condemning lands.

(g) The corporation shall also have power to conduct its business in all its branches, and to have one or more offices out of the State of, and at such places as may be from time to time designated by it.

(h) So far as allowed by law the Directors may hold their meetings and have an office and keep the books of the corporation (except the stock and transfer books) outside of the State of New York.*

* See § 2, Business Corporation Law.

FORM No. 2.

Subscription Agreement.

CAPITAL STOCK, \$ NUMBER OF SHARES, PAR VALUE, \$

We, the undersigned, hereby subscribe for and agree to take at par value the number of shares of the capital stock of the Company to be incorporated under the laws of the State of New York, set opposite our respective names. The amount of our subscriptions is payable in cash, as follows: [*State times of payment.*]

Dated, , 19 .

Names	Addresses	Number of shares	Amount

FORM No. 3.

Certificate of Payment of One-half of Capital Stock.

See § 5, Business Corporations Law.

STATE OF NEW YORK, }
County of } ss.:

We, the undersigned, a majority of the directors of the Company, do hereby certify:

That the capital stock of said company is _____ dollars, and that one-half thereof has been paid in, of which _____ dollars was issued for property purchased.*

That said payment of one-half of said capital stock was made within one year from the incorporation of said company, and within thirty days preceding the date of the execution and acknowledgment of this certificate.

IN WITNESS WHEREOF, we have executed this certificate this _____ day of _____, 19 .

_____ } Majority of
Directors.

* See § 55, Stock Corporation Law.

STATE OF NEW YORK, }
County of , } ss.:

On this day of , 19 , before me personally came [names of directors signing certificate], to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same.

STATE OF NEW YORK, }
County of } ss.:

[Names of president (or vice-president) and secretary (or treasurer)], being respectively duly sworn, depose and say, that he, the said , is the of the Company, and that he, the said , is the thereof, and that the above certificate is true.

Sworn to before me, this
day of , 19 .

NOTE.—§ 53 of the Stock Corporation Law provides that "at the time of subscribing every subscriber whose subscription is payable in money shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment." This provision relates only to subscriptions made after organization. See 22 App. Div. 1, 4; 9 Misc. 425.

See also 25 N. Y. 210; 1 Keyes, 118; 25 Hun, 91 37 Hun, 422.

FORM No. 4.

Amended Certificate to Correct Errors, Omissions, Etc.

See § 7, General Corporation Law.

AMENDED CERTIFICATE OF THE COMPANY.

We, the undersigned incorporators [or directors] of the Company, do hereby make and file this amended certificate, pursuant to § 7 of the General Corporation Law, for the purpose of

- [1. Correcting an informality in said certificate as follows:]
- [2. Omitting from said certificate the following matter not authorized by law:]
- [3. Correcting a defect in the acknowledgment of the original certificate of incorporation as follows:]

IN WITNESS WHEREOF, we have executed this amended certificate in duplicate.

Dated this day of , 19 .

NOTE.—Add acknowledgment as in Form No. 1.

FORM No. 5.

By-Laws.

See §§ 11, 30 and 34, General Corporation Law.

BY-LAWS OF THE COMPANY.*

ARTICLE I.—DIRECTORS.

§ 1. The number of directors of this company shall be all of whom shall be elected by ballot by the stockholders who shall attend in person or by proxy, at the annual meeting of the company, and each director shall be elected to serve for the term of one year.

[One-fourth only of the directors need be elected annually. The terms of office therefore may be regulated so that only this portion will expire each year. Directors need not be stockholders, if the certificate of incorporation or a stockholders' by-law so provide. See page 33, *ante*.]

§ 2. Vacancies in the board of directors occurring during the year shall be filled by a majority vote of the remaining members of the board at any regular meeting of the board or at any special meeting called for the purpose of filling such vacancy.

§ 3. The board of directors shall meet on the first Monday of every month, and whenever called together by the president. On the written request of any director the secretary shall call a special meeting of the board. A majority of the board shall constitute a quorum for the transaction of business.

ARTICLE II.—OFFICERS.

§ 1. The board of directors, immediately after each annual meeting shall elect by ballot the officers of the company for the ensuing year, and a majority vote of the whole number of directors shall be necessary for the election of each of said officers.

§ 2. The officers of the company shall be a president, vice-president, treasurer, secretary and assistant secretary.

§ 3. The president shall preside at all meetings of the board of directors, and shall act as temporary chairman at, and call to order, all meetings of the stockholders; and he shall, under the control of

* See § 45, Stock Corporation Law.

the directors of the company, have the general management of its affairs and shall perform all the duties incidental to his office.

§ 4. The vice-president shall, in the absence or incapacity of the president, perform the duties of that office.

§ 5. The treasurer shall have the custody of, and be responsible for, all moneys, papers, books and accounts of the corporation, save only such papers, books and records as are hereinafter directed to be kept by the secretary; subject always to the control of the board of directors. He shall deposit all funds of the company in such bank or banks as the directors may designate; he shall keep his bank account in the name of the company, and shall exhibit his books and accounts to any director upon application at the office of the company at any time during ordinary business hours; he shall record all transfers of stock and cancel and preserve all certificates of stock transferred; and at each annual meeting of stockholders shall present a full statement of the affairs of the company. He shall also keep a book containing the names, alphabetically arranged, of all persons who are stockholders of this company, showing their places of residence, the number of shares of stock held by them respectively, and the time when they became the owners of such shares, and the amount of money paid thereon; and shall generally perform all the duties appertaining to his office. [Provisions requiring a bond should be here inserted if desired.]

§ 6. The secretary shall keep a record, in proper books provided for that purpose, of all the meetings and proceedings of the board of directors, and also the minutes of the stockholders' meetings; he shall record all the votes of the corporation, and shall keep such other records, and shall attend to such correspondence of the company as the board of directors shall direct; he shall notify the directors and stockholders of their respective meetings; he shall attend to the giving and serving of all notices of the company, and shall in general do and perform all the duties appertaining to his office.

§ 7. The assistant secretary shall perform such duties of the secretary as the latter shall from time to time assign to him.

§ 8. Vacancies among the officers of the company during the year may be filled by a majority vote of the directors at any regular meeting of the board, or at any special meeting called for the purpose of filling such vacancy.

ARTICLE III.—MEETINGS.

§ 1. The annual meeting of the company shall be held at the office of the company on the first Thursday of January of each year, at twelve o'clock, noon, and the secretary shall send through the post-office, at least ten days before such meeting, a notice thereof, addressed to each stockholder at his last-known post-office address, in addition to notice required by law to be published.

§ 2. Special meetings of stockholders, other than those regulated by statute, may be called by the board of directors upon ten days' notice to each stockholder of record, such notice to contain a statement of the business to be transacted at such meeting, and to be served personally or sent through the post-office, addressed to each stockholder at his last known post-office address. The directors shall also call upon like notice a special meeting of stockholders whenever stockholders representing one-third of the capital stock of the company require it. No business other than that specified in the call for the meeting shall be transacted at a special meeting of stockholders.

§ 3. At all meetings of stockholders, except where it is otherwise provided by law, it shall be necessary that stockholders representing in person or by proxy a majority of the capital stock shall be present to constitute a quorum.

ARTICLE IV.—INSPECTORS OF ELECTION.

§ 1. Two inspectors of election shall be chosen at each annual meeting of the company to serve for one year, and if any inspector shall refuse to serve or shall not be present at the time of election, the meeting may appoint an inspector in his place.

ARTICLE V.—SEAL.

§ 1. The seal of the corporation shall be circular in form, with the words [*here insert corporate name*] on the circumference, and the figures [*here insert year of incorporation*] in the center. It shall be kept in the charge and custody of the treasurer, and must be affixed to all instruments requiring a seal, together with the signatures of the president and treasurer, or, in their absence or incapacity to act, of the vice-president and secretary.

ARTICLES VI.—DIVIDENDS.

§ 1. Dividends, payable from the net profits in hand, shall be declared and paid, at such times and in such amounts as the board of directors may from time to time designate.

● ARTICLE VII.—AMENDMENTS.

§ 1. These by-laws may be amended at any annual or special meeting of stockholders called in conformity with Article III upon a majority vote of the stockholders present at such meeting.

The foregoing form is suggestive merely. Additional provisions and alterations to correspond with particular needs should be made.

FORM No. 6.

**Proof to be Filed by Foreign Stock Corporation* to
Obtain License to do Business.**

See §§ 15 and 16, General Corporation Law.

STATEMENT.

The _____ Company, a stock corporation organized under the laws of [State, territory or country] does hereby certify, pursuant to the provisions of the General Corporation Law of the State of New York, as follows:

1. That the business which the said corporation is engaged in carrying on [or purposes to carry on] in the State of New York is as follows: [describe the business or objects of the corporation.]

2. That the principal place of business of the said corporation in the State of New York is [to be] in the Borough of _____, in the City of _____, County of _____.

3. That [name and occupation] residing at _____, is hereby designated as the person upon whom all process against the said corporation may be served within the State of New York, and that the said _____ has an office or place of business at No. _____ street, Borough of _____, in the City of _____, State of New York, the place where said corporation is to have its principal place of business in the State of New York.

4. That annexed hereto is a sworn copy of the charter of the said Company and the consent of the person above designated.

IN WITNESS WHEREOF, the said _____ Company has caused this certificate to be executed by its president [or vice-president], and its corporate seal to be hereto affixed on this _____ day of _____, 19__.

[CORPORATE SEAL.]

COMPANY,

By

[President or Vice-President.]

[Add acknowledgement as in Form No. 40.]

VERIFICATION OF COPY OF CHARTER TO BE ATTACHED.

STATE OF NEW YORK,
County of _____, ss.:

_____, being duly sworn, says that he is the _____ of the _____ Company, and that the copy of the charter or certificate of incorporation of the said Company hereto annexed is a true copy thereof.

Sworn to before me this
day of _____, 19__.

* Other than a moneyed corporation. See § 15, General Stock Corporation Law.

CONSENT OF PERSON DESIGNATED.

STATE OF NEW YORK, ss.:
County of _____,

I, _____, residing at _____, and having an office at No. _____ street, Borough of _____, in the City of _____, State of _____, consent to the designation set forth in the foregoing certificate.

Dated, _____, 19 ____.

STATE OF NEW YORK, ss.:
County of _____,

On the _____ day of _____, 19 ____, before me personally come [*name of person designated*], to me known, and known to me to be the individual described in and who executed the foregoing consent, and he acknowledged to me that he executed the same.

REVOCATION AND DESIGNATION OF NEW AGENT.

The _____ Company, a foreign corporation, hereby revokes the designation of _____ as the person upon whom process against it may be served in the State of New York and in his place designates _____ as the person upon whom all process against said Company may be served within said State.

The office or place of business of said [*name of designee*] is at No. _____ street, Borough of _____, in the City of _____, State of New York, which is also the principal place of business of said _____ Company in the State of New York.

The consent of said _____ to the above designation is hereto attached.

IN WITNESS WHEREOF, the said _____ Company has caused this certificate to be executed by its _____, and has hereunto affixed its corporate seal this _____ day of _____, 19 ____.

[CORPORATE SEAL.]

By

[*President or Vice-President.*]

[*Add acknowledgment as in Form No. 40, and consent and acknowledgment of new designee, as above.*]

FORM No. 7.

Voting Trust Agreement.

See § 25, General Corporation Law.

THIS AGREEMENT, made and entered into this day of
19 , by and between the holders of the certificates of
the capital stock of the Company (hereinafter
referred to as the stockholders), parties of the first part, and A. B.,
C. D., and E. F. (hereinafter referred to as trustees), parties of the
second part. WITNESSETH:

That each of the holders of the certificates of the capital stock of the Company, who shall deposit the same with the Trust Company of New York (hereinafter called the trust company), after being properly transferred on the books of the company to said trustees, and duly assigned by them in blank, agrees for himself and not for the others, but to and with the others and said parties of the second part, as follows:

1. The said shares of capital stock shall remain on deposit with the depository above named for the full period of five years, from the day of , 19 , viz.: until the day of , 19 , except as hereinafter provided.

2. That during said period of five years said trustees shall control the said stock for the purpose of voting on the same in person or by proxy at any annual, special, or other meeting of the stockholders, convened for any purpose whatever.

3. The Trust Company, depository designated hereunder, shall issue to the said stockholders certificates of beneficial interest in such denomination, and made out in the name or names of such person or persons, corporation or corporations, as the depositing certificate holders may direct, and which certificate of beneficial interest shall be in substantially the form following, to wit:

No.	SHARES.
-----	---------

CERTIFICATES OF TRUST COMPANY, FOR THE DE-
POSIT OF THE STOCK OF THE COMPANY.

Trust Company, having received on deposit certain certificates of stock of the _____ Company of the par value of one hundred dollars each, in trust, under the provisions of an agreement dated the _____ day of _____, 19____, between the holders of the certificates of the capital stock of the said

Company, and A. B., C. D., and E. F., trustees to which agreement the holder hereof assents by receiving this certificate,

By permission from Birdseye's Clerks' and Conveyancers' Assistant, Baker, Voorhis & Co., Publishers.

† See § 25, General Corporation Law.

HEREBY CERTIFIES, that _____ is entitled, subject to the provisions of said agreement, to an undivided equitable interest in the said deposited shares, equivalent in amount to the proportion that the number of shares for which this certificate is issued shall bear to the total number of shares of said stock deposited, without, however, the right to vote on any of said shares, which right is exclusively vested in, and is to be exercised by, the trustees named in said agreement and their successors; or to a pro rata proportion of the price paid to said trust company, if said shares are sold as provided in said agreement.

Upon the termination of the trust upon which the said stock was deposited, the holder hereof will be entitled to receive from this company, upon surrender of this certificate, duly indorsed, a certificate for _____ shares of the capital stock of the said

Company so deposited, unless said deposited certificates shall have been sold, as provided in said agreement, and the purchase money paid to said trust company; in which event the holder hereof will be entitled, upon like surrender, to receive, in lieu of his said shares, his pro rata proportion of the said purchase money so paid to this company. The interest in said stock represented by this certificate is assignable only by transfer on the books kept by the said trust company for that purpose, by the holder hereof in person or by proxy, upon surrender of this certificate properly assigned.

Dated _____, 19 ____.

TRUST COMPANY.

BY

4. The said certificates so issued may be transferred in person or by attorney from time to time, and new certificates issued by the trust company, as therein provided; and the deposit of the said share certificates and the acceptance of the trust company certificates shall constitute the depositors parties hereto with the same effect as if they had signed this agreement.

5. The trustees and their successors are authorized to sell and dispose of the said capital stock so deposited, to any party or parties, corporation or corporations, upon the consent of ninety per cent. in amount of the holders appearing on the books of the trust company, of the said certificates of beneficial interest, for such consideration in money as the said ninety per cent. may agree upon, and when so agreed upon, the trust company shall be notified thereof in writing, signed by all of the trustees. Upon receipt of such notice in writing so signed, the trust company shall deliver up the said certificates held by it hereunder to the said trustees, or as they may direct, on receiving the consideration money mentioned in the said notification.

6. The said trustees shall and are hereby authorized to collect any and all dividend or dividends that may accrue upon the said

stock, and after paying the charges and expenses of the trust company and the costs and expenses of executing this trust, pay the balance remaining over to the depositing certificate holders as they may be properly entitled thereto.

7. In the event of the death, resignation, or refusal to act of any of the said trustees hereinbefore mentioned, the surviving or remaining trustees may designate a successor, by making the said designation in writing and filing the same with the trust company, and the certificate or certificates of the said

Company standing in the name of the trustees may be indorsed or transferred by any successor trustees for the time being with the same effect as if indorsed and transferred by the trustees hereinbefore mentioned, and the successor trustee shall have, and may join in exercising, the power of sale and notification in article fifth hereof, as therein provided, and all other powers and trusts hereunder.

8. The Trust Company designated as herein provided, or its successors, in the trust, shall be and remain the agent for the transfer of the capital stock of the said Company, until the expiration of the trust hereby created. It and its successors shall receive a reasonable compensation for its and their services, counsel fees, and expenses as such transfer agent, and in the execution of this trust, to be paid by the Company, and as aforesaid. It or any successor may resign this trust at any time by giving thirty days' written notice of its intention to resign, directed to all and delivered to any one of the trustees hereunder or their successors.

9. None of the parties hereto assumes any personal liability for anything done or omitted to be done by them, or any of them, in good faith, nor for the act of any agent or attorney employed by them in the execution of the trust.

10. In case of the resignation of the trust company, or its refusal to continue to act as trustee, or its removal from the trust, a successor trust company trustee, for the purpose of executing this trust, may be appointed by a majority of the trustees then acting hereunder.

11. The trustees shall keep a record of their proceedings, and they may act by a majority of their whole number at any regular or special meeting convened on notice, or by writing signed by such majority without a formal meeting. The power of the trustees to vote, sell, or consent on or in respect to the shares deposited with the trust company herein, shall determine on the day of , 19 , or sooner, upon consent in writing of the trustees delivered to and lodged with the said trust company, and the said voting trustees are hereby fully empowered to give and deliver such consent at any time in their sole and absolute discretion. Upon such expiration or termination, the said shares of stock of the Company, then held

hereunder, shall be distributed among the registered holders of the said stock trust certificates of beneficial interest, pro rata, upon the surrender of such stock trust certificates of beneficial interest, duly indorsed, to the trust company.

This instrument, or any other paper in writing required by this instrument to be signed or executed hereunder,* may be executed in any number of concurrent instruments of similar tenor, or may be signed or executed in person or by attorney in fact duly acknowledged.

IN WITNESS WHEREOF, the parties of the first part have executed these presents, by depositing their said stock, as herein provided, and the said parties of the second part have executed these presents by affixing their signatures thereto.

A. B.,

C. D.,

E. F.,

VOTING TRUSTEES,

STOCKHOLDERS.

FORM No. 8.

Proxy.

See § 26, General Corporation Law.*

KNOW ALL MEN BY THESE PRESENTS, That I, _____, do hereby constitute and appoint attorney and agent for me and in my name, place and stead, to vote according to the number of votes that I should be entitled to vote, if then personally present, at the annual [or *special*] meeting of stockholders of the _____ Company, to be held on the _____ day of _____, 19____, and at any adjourned meeting thereof; and I hereby revoke all proxies heretofore given by me.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 19____.

_____ [SEAL.]

In presence of _____

* A proxy is valid only for a period of eleven months from the date of execution unless a specified limited time be mentioned. See § 26, General Corporation Law.

FORM No. 9.

Petition to Set Aside Election of Directors.

See § 32, General Corporation Law.

IN THE MATTER OF THE ELECTION OF DIRECTORS OF THE COMPANY.

To the Supreme Court:

The petition of, a stockholder of the Company, a corporation, respectfully shows to the court as follows:

I. That said corporation was on the day of 19 .., duly organized under the laws of the State of New York for the purpose of [*state nature of business*], and is still engaged in such corporate business.

II. That the principal business office of said Company is located at

III. Your petitioner states that on the day of 19 .., at [*state place*] an election of directors of said Company was pretended to be held, at which the following named persons are alleged to have been elected directors:; that said persons assumed to be directors by reason of such election, and have organized and now claim to act as the board of directors of such company.

IV. That annexed hereto and marked Exhibit is a true copy of the record of the proceedings of such election.

V. That said election was invalid and of no effect: [*State reasons.*]

VI. Your petitioner alleges that at the date of such election, and for more than ten days prior thereto, your petitioner was and now is a stockholder of said Company, owning shares of its capital stock, and that he attended and objected to said illegal election.

VII. That your petitioner is aggrieved by and complains of said election and the proceedings, acts and matters touching the same.

VIII. That days' notice of this application has been duly served upon the adverse parties and to those to be affected thereby, as well as to said Company.

Your petitioner prays that this court proceed in a summary way to hear the affidavits, proofs and allegations of the parties hereto, or otherwise inquire into the matters or causes of complaint, and establish a new election; or that the court make such order and give such relief as right and justice may require.

Petitioner.

STATE OF NEW YORK,
County of _____, ss.:

_____, being duly sworn, states that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Petitioner.

Sworn to before me this _____ day
of _____, 19 ____.

FORM No. 10.

Consent and Certificate of Consent or Vote to Extend Corporate Existence.

See § 37, General Corporation Law.

CONSENT OF STOCKHOLDERS.

The undersigned stockholders of the _____ Company, a domestic stock corporation, owning two-thirds in amount of its capital stock; that is to say, _____ shares of the whole number of _____ shares of capital stock of said Company, do hereby consent that the corporate existence of said company be extended for the period of _____ years beyond the time specified in its original certificate of incorporation [or for a further period of _____ years beyond the time specified in any certificate of extension of corporate existence theretofore filed].

IN WITNESS WHEREOF, we have hereunto set our hands opposite the number of shares of stock owned by us, respectively, in such Company, this _____ day of _____, 19 ____, in duplicate.*

_____, shares.
_____, shares.
_____, shares.

CERTIFICATE OF CONSENT OR VOTE.

The undersigned, _____, President [or Vice-President] and _____, Secretary [or Assistant Secretary] of the _____ Company, a domestic stock corporation, hereby certify: That the written consent of the stockholders of said _____ Company, hereto attached, owning two-thirds in amount of its capital stock, has been given [or, by vote at a special meeting of the stockholders of the _____ Company, called for that purpose, upon the same notice as that required for the annual meetings] to extend the existence of said _____ Company for a period of _____

*To be filed in the offices of the Secretary of State and the clerk of the county where the corporation has its principal place of business.

years beyond the time specified in its original certificate of incorporation [or for a further period of _____ years beyond the time specified in any certificate of extension of corporate existence theretofore filed].

[In the case of a vote at a special meeting of stockholders attach a copy of the resolution adopted at such meeting.]

IN WITNESS WHEREOF, we have subscribed and acknowledged this certificate under the seal of the corporation this _____ day of _____, 19 ____.

[CORPORATE SEAL.]

_____,
President [or Vice-President].

_____,
Secretary [or Assistant Secretary].

STATE OF NEW YORK,
County of _____, ss.:

On this _____ day of _____, 19 ____, before me personally came [names of officers signing] to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same.

FORM No. 11.

Waiver of Notice of Meetings.

See § 42, General Corporation Law.

We, the undersigned, being all of the subscribers to the capital stock of the _____ Company, do hereby call the first meeting of the incorporators of said Company, to be held at _____ in the City of _____, County of _____, at _____ A. M., on the _____ day of _____, 19 ____, for the purpose of adopting by-laws, considering and acting upon a proposal for the issue of the capital stock of the corporation in exchange for property, and transacting all other business as may be necessary or convenient in connection with the organization of said corporation; and we do hereby waive all requirements as to notice and publication of the time, place and purposes of said first meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of said Company.

Dated, _____, 19 ____.

NOTE.—The above waiver of notice may be adapted for the annual and special meetings of stockholders and for directors' meetings.

FORM No. 12.

Reference to Waiver of Notice in Proceedings.

See § 42, General Corporation Law.

That said meeting of the stockholders was so held without notice to them and without the lapse of the period of time prescribed by law, all the requirements of law and of the by-laws respecting notice of the time, place and purposes of said meeting having been waived in writing by every stockholder of said Company, as follows, [or a copy of which waiver is hereto attached.]

FORM No. 13.

Resolution for Change of Corporate Name.

See § 61 et seq., General Corporation Law.*

RESOLVED, That the corporate name of this Company be changed from _____ Company to _____ Company, and that a petition to that end be presented to the Supreme Court of the State of New York, pursuant to Sections 61 and 62, inclusive, of the General Corporation Law; and that the President of this Company be empowered to employ counsel and to do all things proper and requisite to effect such change.

FORM No. 14.

Petition for Change of Corporate Name.

See § 61 et seq., General Corporation Law.

SUPREME COURT,

COUNTY.

In the Matter
of
the Application of the _____ Company,
a Domestic Stock Corporation, for
Leave to Change its Name.

TO THE SUPREME COURT:

Your petitioner states:

I. That it is a domestic stock corporation incorporated under the Business Corporations Law of the State of New York, having its principal office and place of business in the Borough of _____ in the City of _____, County of _____, State of New York.

II. That it is engaged in [*state nature of business*].

*A resolution is required only in the cases of banking, insurance and railroad corporations. See § 60, General Corporation Law.

III. That the present name of your petitioner is _____ Company. That it prays that it may be authorized to adopt the name of _____ Company.

IV. That there are in adjoining states business concerns having names resembling that of your petitioner, and that such similarity of names causes confusion and loss to your petitioner.

V. That the name, _____ Company, is not the name of any other corporation incorporated in the State of New York, or one so nearly resembling it, as to be calculated to deceive, as is evidenced by the certificate of the Secretary of State, hereto annexed.*

Dated, _____, 19 .

[CORPORATE SEAL.]

By _____ COMPANY,

President.

STATE OF NEW YORK, ss.:
County of _____,

_____, being duly sworn, deposes and says, that he is the president of the _____ Company, the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why this verification is made by deponent and not by the petitioner is that the petitioner is a domestic corporation of which deponent is the president.

That the grounds of deponent's belief, as to all matters not stated upon his knowledge in said petition are † _____

Sworn to before me this _____ day
of _____, 19 .

FORM No. 15.

Notice of Application to Change Corporate Name.

See § 62, General Corporation Law.

TO WHOM IT MAY CONCERN:

The _____ Company, a domestic corporation, whose principal business office is located in the City of _____, County of _____, and State of New York, will apply to the Supreme Court, at a Special Term thereof, to be held at the _____, in the City of _____, County of _____, on the _____ day of _____, 19 , at _____

* Required by § 60, General Corporation Law.

† This paragraph is unnecessary in cases where the affiant's knowledge is personal. See § 61, General Corporation Law, and §§ 525, 526, Code of Civil Procedure.

o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for leave to assume another corporate name, to wit,
Company.

Dated, _____, 19 ____ COMPANY.

By _____
President.

NOTE.—A copy of the above notice must be published, and with a copy of the petition (Form No. 14) must be filed with the Secretary of State, whereupon the proposed new name is reserved for a certain period. See § 62, General Corporation Law.

FORM No. 16.

Order Changing Corporate Name.

See § 63, General Corporation Law.

At a Special Term of the Supreme Court,
held at _____ in the County of _____
on the _____ day of _____, 19 ____.

Present: Hon. _____, Justice.

[Title; see Form 14.]

Upon reading and filing the petition of the _____ Company, a domestic stock corporation, verified by _____, its president, for an order permitting said Company to assume the name of _____ Company; and upon reading and filing the certificate of the Secretary of State thereto annexed, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive; and it appearing that notice of the presentation of said petition has been duly published once in each week for three successive weeks in _____, a newspaper published in the county of _____, and in _____, a newspaper published in the county of _____, in which county [or counties] said corporation has its business office; [or, if the corporation has no business office, in _____, a newspaper published in the county in which its principal corporate property is situated, or in which its operations are or therefore have been principally conducted]; [or if the corporation be located in the city and county of New York, that such notice has been published once in each week for three successive weeks in two daily newspapers published in such county]; and the court being satisfied by said petition and by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and that the petition has been duly authorized, and that due notice of the presentation of the petition has been made,

Now, upon motion of _____, Esq., attorney for the petitioner, it is

ORDERED that said petition be granted, and that said Company be authorized to assume the name of _____ Company on and after the _____ day of _____, 19 ____ [not

less than thirty days after the date of the entry of the order]; and it is further

ORDERED that this order be entered, and the papers on which it is granted be filed within ten days from the date hereof, in the office of the clerk of _____ county, the county in which the certificate of incorporation of said corporation is filed; [or, if there be none filed, *in the county in which its principal office shall be located*; or, if it has no business office, *in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held*]; and it is further

ORDERED that within ten days after the entry hereof, a certified copy of this order be filed in the office of the Secretary of State; and that within the same time a copy of this order be published once in each week for four successive weeks in the _____, a newspaper in the county in which this order is hereby directed to be entered.*

FORM No. 17.

Consent of Stockholders to Mortgage.

See § 6, Stock Corporation Law.

The undersigned stockholders of _____ Company, a corporation organized and existing under the laws of the State of New York, with a capital stock of _____ dollars, consisting of _____ shares, of the par value of _____ dollars each, and owning [*state percentage*, which must be *at least two-thirds*] of the capital stock of said Company, do hereby consent in writing that said Company may mortgage its property and franchises to _____, as trustee. Such mortgage to be dated the _____ day of _____, 19____, and to be issued to secure the payment of _____ bonds of said _____ Company, of _____ dollars each.

Said bonds to be dated the _____ day of _____, 19____, and to mature in _____ years thereafter, and to bear interest from the _____ day of _____, 19____, until maturity, at the rate of _____ per centum per annum, payable on the _____ day of _____ and _____ of each year.

IN WITNESS WHEREOF, we have hereunto set our hands opposite the number of shares of stock of said Company owned by us.

Dated, _____, 19____.

_____, shares.
_____, shares.
_____, shares.

Stockholders.

*See §63, General Corporation Law, as to publication and filing of original order and filing a certified copy; also as to filing and recording affidavit of publication.

STATE OF NEW YORK, ss.:
County of ,

On this day of , 19 , before me personally came , to me known, and known to me to be the persons described in and who executed the foregoing consent, and they severally acknowledged to me that they executed the same.

FORM No. 18.

Certificate of Consent or Vote to Mortgage.

See § 6, Stock Corporation Law.

WE HEREBY CERTIFY that the stockholders of [*state percentage, which must be not less than two-thirds*] of the capital stock of the Company, a corporation organized and existing under the laws of the State of New York, have consented in writing to the mortgage made and executed by the Company to , as trustee, dated the day of , 19 , a copy of which mortgage is hereto attached and marked [*or by a vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the Company*].

IN WITNESS WHEREOF, the President [*or Vice-President*] and the Secretary [*or Assistant Secretary*] of said Company have subscribed the foregoing certificate, under the seal of said corporation, this day of , 19 .

COMPANY,

By

President [*or Vice-President*].

[CORPORATE SEAL.]

Secretary [*or Assistant Secretary*].

STATE OF NEW YORK, ss.:
County of ,

On the day of , in the year , before me personally came and , to me known, who, being by me duly sworn, did depose and say that he, the said resided in the City of , State of and is the president of the Company, and that he, the said resided in the City of , State of , and is the secretary of the Company, the corporation described in and which executed the foregoing certificate; that they knew the seal of the said corporation; that the seal affixed to said certificate was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto by like order.

FORM No. 19.

Unanimous Consent to Change Principal Office and Place of Business.

See § 13, Stock Corporation Law.

COMPANY.

The undersigned stockholders of the _____ Company, a domestic stock corporation, being the owners of all the outstanding capital stock of said corporation, as appears by the annexed affidavit of the custodian of the stock-book of said Company [see Form 25], do hereby consent in writing that the principal office and place of business of said Company, named in the certificate of incorporation, to wit: the [City, County or Town, as the case may be] be changed to the City of _____, County of _____, in the State of New York.*

IN WITNESS WHEREOF, we have hereunto signed our names opposite the number of shares of stock owned by us, respectively, this _____ day of _____, 19 ____.

_____, Shares,
_____, Shares,
_____, Shares,

Stockholders.

FORM No. 20.

Certificate of Vote or Consent to Change Principal Office and Place of Business.

See § 13, Stock Corporation Law.

The undersigned, the president, secretary and a majority of the directors of the corporation hereinafter named, do hereby certify:

That the name of said corporation is the _____ Company.

That the principal office and place of business of said Corporation was originally located [and to which it may have been subsequently changed] in the [city, town and county] in the State of New York.

That said Company desires to change its said principal office and place of business to the [city, town and county] in the State of New York.

That it is the purpose of said Company actually to transact and carry on its regular business from day to day at such last-named place.

That at a special meeting of the stockholders of said Company, held _____ on the _____ day of _____, 19 ____, stockholders owning _____ shares of the capital stock of said Company, in person or by proxy, adopted the following resolution:

* This consent must be acknowledged by all of the stockholders (see Form No. 17) and filed in the office of the Secretary of State. See § 13, Stock Corporation Law.

Resolved, That the principal office and place of business of this Company be changed from _____ to _____, and that the president and secretary, and directors, or a majority thereof, be authorized and directed to execute the certificates required to be filed by Section 13 of the Stock Corporation Law, such change pursuant to law.

[Or, That such change has been authorized by the unanimous consent of the stockholders expressed in writing, duly acknowledged and filed in the office of the Secretary of State.]

That the names of the directors of said corporation and their respective places of residence are:

Names.	Residences.
_____	_____
_____	_____
_____	_____

IN WITNESS WHEREOF, we, the President and Secretary, and a majority of the directors of said _____ Company, have hereunto signed this certificate, in triplicate,* this _____ day of _____, 19 .

_____, President.

_____, Secretary,

_____,

_____,

_____,

A Majority of Directors.

STATE OF NEW YORK, ss.:
County of _____,

being duly and severally sworn, depose and say that said _____ is the president of _____ Company, the corporation mentioned in said certificate; that said _____ is the secretary, and that _____ are a majority of the directors thereof; that they have read the foregoing certificate and know the contents thereof; that the same is true of their own knowledge.

Sworn to before me this
day of _____, 19 .

_____, President,

_____, Secretary,

_____,

_____,

_____,

A Majority of Directors.

*For filing in the various offices. See § 13, Stock Corporation Law.

FORM No. 21.

Certificate of Merger.

See § 15, Stock Corporation Law.

The undersigned, the _____ Company, hereby certifies:

I. That the _____ Company is a domestic stock corporation existing under the laws of the state of New York [or, a foreign corporation duly authorized to do business in the State of New York].

II. That, the _____ Company is a domestic stock corporation existing under the laws of the State of New York [or, a foreign corporation duly authorized to do business in the State of New York], organized for [or engaged in] business similar or incidental to that of the undersigned corporation.

III. That on the _____ day of _____, 19____, the undersigned _____ Company lawfully owned all the stock of the _____ Company, and on said date the board of directors of said _____ Company, adopted the following resolution to merge the _____ Company with the _____ Company.

"WHEREAS, the _____ Company was organized for [or is engaged in] business similar or incidental to that of the undersigned _____ Company, and

"WHEREAS, the _____ Company lawfully owns all the stock of the _____ Company,

"RESOLVED, that the undersigned _____ Company merge _____ Company, and that this Company execute and file in the office of the Secretary of State a certificate of such ownership, and of this resolution."

IN WITNESS WHEREOF the undersigned _____ Company has caused this certificate to be executed by its duly authorized officers, and its common seal to be affixed hereto this _____ day of _____, 19____.

COMPANY,

By

[CORPORATE SEAL]

President.

Attest:

Secretary.

STATE OF NEW YORK,
County of _____, ss.:

On the _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resided in _____; that he is the president of _____ Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by

8. That the number of shares into which said capital stock is to be divided is _____ shares of common stock of the par value of _____ each, and each stockholder of record shall be entitled on the election of directors to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director, or he may distribute them among the number to be voted for or any two or more of them as he may see fit.

9. That the manner of distributing such capital stock among the holders thereof shall be as follows: The capital stock of each of the corporations, parties hereto, shall be convertible into the capital stock of said new corporation hereby formed, share for share, and upon presentation and surrender of any outstanding certificates of stock in either of said constituent corporations, parties hereto, certificates for like amounts of stock in said new corporation shall be issued to the holders thereof.

IN WITNESS WHEREOF, the said parties of the first and second parts have executed this agreement in duplicate, and have hereunto set their respective signatures, and have caused to be hereto affixed the corporate seals of their respective corporations, of which they are respectively the directors, the date and year first aforesaid.

[CORPORATE SEAL.]

Directors of

President,

Attest:

Secretary.

Directors of

[CORPORATE SEAL.]

President,

Attest:

Secretary.

STATE OF NEW YORK, ss.:

County of _____,

On the _____ day of _____, 19____, before me, personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in the City of _____; that he is the President of the _____ Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors, of said corporation, and he signed his name by like order.

Subscribed and sworn to before
me this _____ day of _____, 19____.

Notary Public.

STATE OF NEW YORK, ss.:
County of _____.

On the day of , 19 , before me, personally came , directors of Company, to me severally known to be the persons who severally executed the foregoing agreement, and severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

Notary Public.

STATE OF NEW YORK, ss.:
County of _____,

On the day of , 19 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he resides in the city of , that he is the president of , the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Subscribed and sworn to before me
this day of , 19 .

Notary Public.

STATE OF NEW YORK, ss.:
County of _____,

On the day of , 19 , before me personally came , directors of Company, to me severally known to be the persons who severally executed the foregoing agreement, and severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

Notary Public.

SWORN COPY OF PROCEEDINGS.

A special meeting of stockholders of _____, for the purpose of submitting to said stockholders the annexed agreement, dated _____, for the consolidation of _____, with _____, under the name of _____, was held at the office of _____, in the City of _____, County of _____, N. Y., on the _____ day of _____, 19____, at _____ o'clock in the _____ of that day.

Said meeting was called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each stockholder at his last known post-office address and deposited in

the post-office, postage prepaid, and published for at least two successive weeks in _____, one of the newspapers of _____ county, in which county said corporations each have their place of business.

Pursuant to such notice the stockholders of the _____ met at _____, in the city of _____, county of _____, on the _____ day of _____, 19____, at _____ o'clock in the _____ noon.

There were present at such meeting in person or by proxy stockholders owning _____ shares of the stock, being at least two-thirds of the stock of said corporation.

The meeting was organized by the election of _____ Chairman, and _____ Secretary thereof.

Proof by affidavit of the service of the notice of the meeting and the publication thereof was read and is hereto annexed.

The annexed agreement was thereupon submitted to said stockholders for their approval, and, after being considered, a vote was taken by ballot upon the question of approving or rejecting the same, pursuant to statute.

The said ballots were duly cast in person or by proxy, and upon a canvass of such ballots it was found that the vote of stockholders owning _____ shares of the stock were cast in favor of the approval of said agreement for consolidation and no votes were cast against the approval of said agreement.

The whole number of shares of the capital stock of said corporation is _____ and the votes of stockholders which were so cast in person or by proxy in favor of the said agreement of the consolidation constitute all of the stock of said corporation.

Thereupon said agreement of consolidation was declared duly approved and adopted, and the meeting adjourned.

IN WITNESS WHEREOF, I have made, signed and sworn to the foregoing copy of proceedings in duplicate this _____ day of _____, 19____.

Secretary.

STATE OF NEW YORK, ss.:
County of _____,

_____ being duly sworn deposes and says that he was elected to act, and did act as Secretary of a special meeting of the stockholders of _____ held for the purpose of considering the annexed agreement of consolidation dated _____, 19____, that the foregoing is a copy of the proceedings of said meeting, and is, in all respects, a correct copy of such proceedings and of all the proceedings of said meeting, and that notice of said meeting was given as aforesaid, pursuant to statute.

Sworn to before me this
day of _____, 19____.

Notary Public.

STATE OF NEW YORK,
County of _____, ss.:

_____ of said county being duly sworn, deposes and says, that he is the manager of the _____, publishers of the _____, a newspaper printed and published in _____, in said county, and that a notice, of which the annexed is a printed copy, cut from said newspaper, has been published in said newspaper, for twelve consecutive days, commencing on the _____ day of _____, 19 .

Sworn to before me this
day of _____, 19 .

Notary Public.

NOTICE TO STOCKHOLDERS.

_____, 19 .
A special meeting of the stockholders of _____ will be held on the _____ day of _____, 19 , at _____ o'clock . M., at the office of such company, at _____, in the city of _____, for the purpose of voting upon a proposition to consolidate such company with _____, pursuant to Sections 8 to 12 of the Business Corporations Law, and for such other business as may properly come before said meeting.

Secretary.

President.

STATE OF NEW YORK,
County of _____, ss.:

_____, being duly sworn, deposes and says that he resides in the city of _____, and is over twenty-one years of age; on the _____ day of _____, 19 , he mailed a copy of the foregoing notice to each of the following named persons by depositing the same in the post-office at _____ in a sealed envelope with full postage prepaid thereon, addressed to said persons respectively as follows:

● _____
Sworn to before me this
day of _____, 19 .

Notary Public.

[Repeat above Sworn Copy of Proceedings for second corporation.]

FORM No. 22.

Notice of Annual Meeting.

See § 25, Stock Corporation Law.

The annual meeting of the stockholders of the _____ Company for the election of _____ directors for the ensuing year and for the transaction of such other business as may properly come before the meeting,* will be held at the office of the Company, No. _____ street in the City of _____ on the _____ day of _____, 19____, at _____ o'clock in the _____ noon. Transfer books will close on the _____ day of _____, 19____, and will open on the _____ day of _____, 19____.

Dated, _____, 19____.

_____,
Secretary.

[Notices of special meetings should state the purposes for which they are called, and in most instances this requirement is imperative.]

FORM No. 23.

Unanimous Consent of Stockholders to Increase or Reduce Number of Directors.

See § 26, Stock Corporation Law.

We the undersigned stockholders of the _____ Company, personally or by our duly authorized proxies, constituting the holders of record of its entire capital stock issued and outstanding, as appears by the affidavit of _____, the custodian of the stock book of said corporation, hereto attached,† do hereby consent that the number of the directors of said _____ Company be [increased or reduced] from _____ to _____, and that the by-laws of said Company be amended accordingly, as follows:

Signed in duplicate‡ this _____ day of _____, 19____.

_____,
_____,
_____,
Stockholders.

NOTE.—It is advisable to have each stockholder acknowledge the foregoing consent, although § 26 of the Stock Corporation Law does not so require.

*Inspectors of election of stock corporations may be appointed in the manner prescribed in the by-laws. The inspectors of the first election of directors and of all previous meetings of the stockholders must be appointed by the board of directors named in the certificate of incorporation. See § 31, Stock Corporation Law.

† For affidavit of custodian of stock book see Form No. 25.

‡ For filing in the offices where the original certificates of incorporation were filed.

FORM No. 24.

Transcript of Proceedings of Meeting Increasing or Reducing Number of Directors.

See § 26, Stock Corporation Law.

The following is a true copy of the minutes of a meeting of the stockholders of the _____ Company, a stock corporation duly organized and existing under the laws of the State of New York, held at _____, in the City of _____, State of New York, on the _____ day of _____, 19____, which minutes truly set forth the proceedings had at said meeting.

Special meeting of the stockholders of _____ Company, held the _____ day of _____, 19____, at No. _____ street, in the City of _____, State of New York, at _____ o'clock in the _____ noon, for the purpose of voting upon the proposition to [increase or decrease] the number of directors of said Company from _____ to _____.

_____, the Secretary of the Company, reported that two weeks' written notice of said special meeting was served upon all stockholders of record, personally or by mail, directed to each stockholder at his last known post-office address. The affidavit of _____, attached to a copy of said notice showing proper service thereof, was presented and ordered filed.

Stockholders owning a majority [or more than a majority] of the stock of said corporation were present in person or by proxy as follows:

Name of Stockholders.	Number of Shares.
_____	_____

At said meeting _____ was elected President, and _____ was elected Secretary thereof.

It was moved, seconded and carried that the number of directors of _____ Company be [increased or reduced] from _____ to _____, and that Section _____, of Article _____, of the by-laws be amended so as to read as follows:

The inspectors of election,* _____ duly reported that stockholders owning _____ shares of the stock of the Company, constituting [more than, or at least a] a majority of the total number of shares issued and outstanding, voted in favor of said motion [and stockholders owning _____ shares of the stock of said Company voted in the negative].

Total number of shares voted.....

Total number of shares not voted.....

Total shares issued and outstanding.....

The meeting then adjourned.

*See §§ 30 and 31, General Corporation Law.

†See note to Form No. 23, ante.

IN WITNESS WHEREOF the undersigned president and secretary of said meeting have signed and verified this transcript, in duplicate, this day of , 19 .

_____, President.

_____, Secretary.

STATE OF NEW YORK, ss.:

County of ,

and , being severally and duly sworn, state that the said was the president, and that the said was the secretary of a special meeting of stockholders of Company, held at in the City of , State of New York, on the day of , 19 ; and that the foregoing is a true transcript of the proceedings had at said meeting, and duly entered in the minutes of said Company.

_____, President.

_____, Secretary.

Sworn to before me this

day of , 19 .

FORM No. 25.

Affidavit of Custodian of Stock Book.

See §§ 26 and 64, Stock Corporation Law.

STATE OF NEW YORK, ss.:

County of ,

_____, being duly sworn, states: That he is the of the Company; that he is the custodian of the stock book of said corporation; and that the persons who have signed the [*foregoing* or *attached*] consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding.

Sworn to before me this

day of , 19 .

FORM No. 26.

Oath of Inspectors of Election.

See § 31, Stock Corporation Law.

STATE OF NEW YORK, ss.:

County of _____,

_____ and _____, being duly sworn say that they will faithfully execute, with strict impartiality, and according to the best of their ability, the duties of inspectors of election at the annual [or special*] meeting of the stockholders of the _____ Company to be held on the _____ day of _____, 19____, at _____ o'clock in the _____ noon.

Sworn to before me this _____ day of _____, 19____.

NOTE.—Directors and officers of corporations (other than moneyed corporations such as banks, etc.) may act as inspectors of election. See § 31, Stock Corporation Law.

FORM No. 27.

Certificate of Inspectors of Election.

See § 31, Stock Corporation Law.

The undersigned inspectors of election, duly appointed in the manner prescribed in the by-laws, to act at the annual [or special*] meeting of the stockholders of _____ Company, hereby make the following certificate of the result of the vote taken at said meeting:

Said annual [or special] meeting of the stockholders was held on the _____ day of _____, 19____, at the office of the _____ Company in the City of _____, at _____ o'clock in the _____ noon, for the purpose [among other things] of _____ votes representing _____ shares of the capital stock of the company were cast, of which votes representing _____ shares were cast for the following named persons who were accordingly elected directors for the ensuing year:

[Or, state the nature of any proposition or resolution adopted.]

IN WITNESS WHEREOF, we have signed our names hereto, in duplicate, this _____ day of _____, 19____.

STATE OF NEW YORK, ss.:

County of _____,

On this _____ day of _____, 19____, before me personally came _____ and _____, to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same.

NOTE.—The above certificate and oath (Form No. 26) must be filed in the office of the clerk of the county in which the election or meeting is held.

*See §§ 30, 31, General Corporation Law.

dollars was issued for property purchased. (See § 55, Stock Corporation Law.)

2. The debts of said company amount to [or at least equal] dollars.

3. The assets of said company amount to [or* at least equal] dollars.

4. [Names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name of the person legally designated as the person upon whom process may be served within the State of New York.*]

_____,
[President, Vice-President, Secretary or Treasurer.]

NOTE.—§ 34, Stock Corporation Law, does not require the annual report to be acknowledged or sworn to. It must be filed in the office of the Secretary of State.

FORM No 30.

Stock Certificate.

See §§ 50, 51, Stock Corporation Law.

Number . Shares, \$ each. Shares
CAPITAL, \$.

THE COMPANY.

Incorporated under the Laws of the State of New York.

Preferred Stock, \$ Common Stock, \$

Full-paid and Non-assessable.

This is to certify that

is the owner of shares of the Company, transferable only on
Stock of the Company by the holder thereof, in person, or by
the books of the Company upon surrender of this certificate endorsed.

[CORPORATE SEAL.]† New York, 19 .

President [or Vice-President].

Secretary [or Treasurer].

[Endorsement.]

For value received, hereby sell, assign and transfer to
shares of the capital stock represented by the with-
in mentioned certificate and do hereby constitute and
appoint attorney to cause the same to be transferred
on the books of the Company.

Witness my hand and seal this day of ,
19 .

In presence of [SEAL.]

* See § 16, General Corporation Law.

† Common or preferred. Preferred stock certificates should specify in what the preference consists. See Form No. 32.

‡ Where no corporate seal has been adopted, see note to § 11, General Corporation Law.

FORM No. 31.

Certificate of Partly Paid Stock.

See § 60, Stock Corporation Law.

Number . Shares, \$ each. Shares.
CAPITAL, \$.

THE COMPANY.

Incorporated under the Laws of the State of New York.

Preferred stock, \$ Common Stock, \$

This is to certify that is the owner of
shares of the partly-paid* stock of Company
(which partly-paid stock consists of shares of *stock, of
the par value of \$ each, being the whole [or a part†] of the
above named authorized capital stock). This certificate is transferable
only on the books of the Company by the holder hereof, in person or
by duly authorized attorney, upon surrender hereof. per cent. of
the par value of shares of said * partly-paid stock has
been paid hereon. The said and his assignees shall
not be subject to any liability except for the payment to said
Company for the amount remaining unpaid upon this certificate, as
and when called by the board of directors, and for the payment of
any indebtedness to the employees of said Company, pursuant to sec-
tions 57, 58 and 59 of Chapter 61 of the Laws of 1909.

WITNESS the seal of the Company and the signatures of its presi-
dent [or vice-president] and secretary [or treasurer], this day
of , 19 .

President [or Vice-President].

[CORPORATE SEAL.]

Secretary [or Treasurer].

*[Payment of the respective installments, and the dates and
amounts thereof, should be endorsed on the certificate.]*

For value received hereby sell, assign and transfer
to shares of the capital stock represented by
this certificate, and do hereby constitute and appoint
attorney to cause the same to be transferred on the books of the
Company.

Witness my hand and seal this day of 19 .
In presence of

[SEAL.]

* Preferred or common. See § 51, Stock Corporation Law.

† May be the whole or any part of the capital stock. § 60, General Corporation Law.

FORM No 32.

Certificate of Preferred Stock.

See § 61, Stock Corporation Law.

Number . Shares, \$ each. Shares.
CAPITAL, \$.
COMPANY.

Incorporated under the Laws of the State of New York.

Common stock, \$. Preferred stock, \$.
Full-Paid and Non-Assessable.

THIS IS TO CERTIFY that . is the owner of
shares of the preferred stock of the . Company,
transferable only on the books of the company by the holder in
person, or by his duly authorized attorney, upon the surrender of
this certificate properly endorsed.

The holder of the preferred stock represented by this certificate is
entitled to receive, and the Company is obligated to pay, annually
[or *semi-annually*] out of its surplus or net earnings, a cumulative
dividend of . per centum before any dividend is declared or
paid upon the common stock. In case the net profits in any year
shall be insufficient to pay said preferred dividend, either in whole or
in part, any unpaid portion thereof shall become a charge against
the net profits of the Company, and shall be paid in full therefrom
before any dividends are paid or declared upon the common stock.

Said preferred stock is subject to redemption, in the discretion of
the Company, at any time after . years from the
day of ., 19 ., upon payment of . dollars
per share and all accumulated dividends, if any.

Said preferred stock is not entitled to vote at stockholders' meet-
ings.*

WITNESS the seal of the Company and the signatures of its presi-
dent [or *vice-president*] and secretary [or *treasurer*] this
day of ., 19 .

[CORPORATE SEAL.]

_____,
[President or Vice-President.]

_____,
[Secretary or Treasurer.]

* See note to § 23, General Corporation Law. See also § 51, Stock Corporation Law.

FORM No 33.

Notice of Meeting to Authorize Issue of Preferred or Common Stock.*

See § 61, Stock Corporation Law.

A special meeting of the stockholders of the _____ Company will be held at No. _____ street, in the City of _____, State of New York, on the _____ day of _____, 19 _____, at _____ o'clock in the _____ noon, for the purpose of voting upon a proposition to reclassify the capital stock of said Company, so that its present capital stock of _____ dollars, consisting of _____ shares of common stock of the par value of _____ dollars each, shall consist of _____ shares of common stock and _____ shares of preferred stock, all of the par value of _____ dollars each; said preferred stock to have no voting power,† to be entitled to a cumulative preferential annual dividend of _____ per centum, and to be redeemable at par at the discretion of the company _____ years from the date of issue.

By order of the Board of Directors.

_____,
Secretary.

NOTE.—The foregoing notice must be printed once a week for two successive weeks immediately preceding the date of the meeting, in a newspaper published in the county in which the meeting is to be held, and in such other manner as the by-laws prescribe for the annual meeting. See § 25, Stock Corporation Law.

FORM No. 34.

Certificate of Proceedings of Meeting to Authorize Preferred or Common Stock.*

See § 61, Stock Corporation Law.

We, _____, president and _____, secretary of the _____ Company, a stock corporation organized under the laws of the State of New York, do hereby certify as follows:

That a special meeting of the stockholders of said Company to vote upon a proposition to reclassify the capital stock of said Company, as specified in the notice for said meeting (hereinafter referred to and made a part of this certificate), was duly called, upon due notice of the time and place of said meeting, published at least once a week for two successive weeks immediately preceding the date

* Or both; also different classes of preferred stock.

† See note to § 23, General Corporation Law, ante.

of said meeting, in _____, a newspaper published in the county of _____, where said meeting was held. Such notice was also given in the manner required by the by-laws for the annual meeting of said Company, to wit: *[by mailing the same to each stockholder of the said Company at his last known post-office address at least _____ days before the date of said meeting.]*

A copy of said notice is as follows: *[see Form No. 33.]*

Proof of due publication of the notice of said meeting and of the service of the said notice by mailing appears by the affidavits of _____ and _____ attached.

That at said meeting, the holders of record of _____ shares, constituting *[more than or at least*]* two-thirds of the capital stock of said Company voted in favor of the following resolution:

"RESOLVED, that the capital stock of the company, now consisting of _____ shares of common stock of the par value of _____ dollars each, of which _____ shares have been issued and are outstanding, and _____ shares remain unissued, be reclassified into common and preferred stock, consisting of _____ shares of common stock and _____ shares of preferred stock, all of the par value of _____ dollars each.

"That the _____ shares of stock remaining unissued shall constitute the preferred stock hereby created, the stock issued and outstanding remaining common stock as heretofore.

"That said _____ shares of preferred stock shall be entitled to receive a cumulative preferential dividend of _____ per centum per annum, payable annually *[or semi-annually]* before any dividends are paid upon said common stock.

"That said preferred stock shall not entitle the holders thereof to vote thereon.†

"That said preferred stock shall, at the option of the company, be redeemable at par at the discretion of the corporation _____ years from the date of issue."

IN WITNESS WHEREOF we have executed this certificate of the proceedings of said special meeting, in duplicate,‡ this _____ day of _____, 19 _____.

[President or Vice-President.]

[Secretary or Assistant Secretary.]

STATE OF NEW YORK, ss.:
County of _____,

_____ and _____, being duly and severally sworn, say: That said _____ is the president *[or vice-president]*,

* As the case may be.

† See § 23, General Corporation Law.

‡ For filing and recording in the offices where the certificates of incorporation were filed and recorded. See § 5, General Corporation Law.

and said _____ is the secretary [or *Assistant Secretary*]
 of the _____ Company; that they have read the foregoing
 certificate and know the contents thereof, and that the same is
 true.

Sworn to before me this _____,
 day of _____, 19 ____.

FORM No. 35.

Notice of Meeting to Increase or Reduce Capital Stock.

See § 63, Stock Corporation Law.

A special meeting of the stockholders of _____ Company
 will be held at No. _____ street, in the City of _____, on
 the _____ day of _____, 19 ____, at _____ o'clock in the
 noon, for the purpose of [*increasing or reducing*] the
 capital stock* of said corporation from _____ dollars, consisting
 of _____ shares* of the par value of _____ dollars each, to
 _____ dollars to consist of _____ shares,* of the same
 par value.†

Dated, _____, 19 ____.

President [or Vice-President],

Secretary.

FORM No. 36.

Unanimous Consent to Increase or Reduce Capital Stock.

See § 63, Stock Corporation Law.

The undersigned stockholders of record of the
 Company, a stock corporation organized under the laws of the
 State of New York, owning the entire capital stock of said corpora-
 tion issued and outstanding, hereby consent that the capital stock*
 of the said Company be [*increased or reduced*] from _____ dollars,
 consisting of _____ shares,* of the par value of _____ dollars

* Common or preferred.

† See § 65, Stock Corporation Law, which relates to the method of changing par value of shares.

each, to the amount of dollars, to consist of
shares, of the same par value. [See notes to Form No. 36.]
Dated, , 19 .

Names of Stockholders.	Number of Shares.

[Attach affidavit of custodian of stock book. See Form No. 25.]

As the consent must be filed in the offices of the secretary of state and the clerk of the county in which the principal place of business of the corporation is located, and as a copy of the consent must be entered upon the minutes of the corporation (see § 64, Stock Corporation Law), it seems desirable to execute the consent in triplicate. The consent needs no meeting to effectuate it but should be acknowledged by each stockholder, although § 63 of the Stock Corporation Law does not so require.

FORM No. 37.

Certificate of Consent or Vote to Increase or Reduce Capital Stock.

See § 64, Stock Corporation Law.

We, , Chairman, and , Secretary, of a special meeting of the stockholders of the Company, a stock corporation organized under the laws of the State of New York, called for the purpose of [*increasing or reducing*] the amount of its capital stock, hereby make, sign, verify and acknowledge the following certificate of the proceedings had at such meeting:

That said Company, desiring to [*increase or reduce*] the amount of its capital stock, the president [*or vice-president*] and the secretary caused a notice signed by them to be published in , a newspaper printed in the county of , in which county* the principal business office of said Company is located, once a week for at least two successive weeks prior to the date of the meeting called thereby, which said notice was as follows: [See Form 35.]

That at least two weeks previous to said meeting, a copy of said notice, enclosed in a post-paid envelope, was duly mailed to each stockholder of record at his last known post-office address, as appears by the affidavit of , hereto attached,* [or at least five days before said meeting copies of said notice were personally served upon the following-named stockholders, as appears by the affidavit of hereto attached*]:

That at the time and the place specified in said notices

* "If any [newspaper] is published therein." Section 63, Stock Corporation Law.

stockholders appeared, in person and by proxy in numbers representing at least a majority of all the shares of said Company, and that said stockholders organized by choosing from their number the undersigned, _____, as chairman, and the undersigned, _____, as secretary thereof.

That the notice for said meeting having been read, and proof of the proper publishing and mailing [or *publishing and serving*, or *publishing, mailing and serving*] thereof having been presented and ordered on file, the following resolution was adopted,

"RESOLVED, that the _____ Company does hereby [*increase or reduce*] the amount of its* capital stock from _____ dollars, consisting of _____ shares* of the par value of _____ dollars each, to the amount of _____ dollars, to consist of _____ shares* of the same par value.

That the vote of the stockholders present, in person and by proxy, upon said resolution was duly canvassed, and _____ shares of the capital stock of said Company, being at least a majority of all the stock thereof, were voted in favor of said resolution, and _____ shares were voted in the negative.

And we do further certify:

That the amount of capital of said Company heretofore authorized is _____ dollars, of which _____ dollars thereof was actually issued.**

That the amount of the [*increased or reduced*] capital stock is _____ dollars.

[*That the whole amount of the ascertained debts and liabilities of the said Company is _____ dollars.†*]

IN WITNESS WHEREOF we have signed this certificate, in duplicate, this _____ day of _____, 19 _____.

Chairman.

Secretary.

STATE OF NEW YORK, ss.:

County of _____,

_____ and _____, being duly and severally sworn, say: That we are the Chairman and Secretary, respectively, of the meeting described in the foregoing certificate; that we have read

*Common or preferred.

**See § 55, Stock Corporation Law.

† This statement is necessary only in the case of a reduction of the capital stock, when the following approval must be endorsed by the State Comptroller on the certificate: "The reduced capital is sufficient for the proper purposes of the within corporation, and is in excess of its ascertained debts and liabilities." In practice, the State Comptroller gives such approval on a separate blank provided by his office.

the foregoing certificate subscribed by us and that the same is true of our own knowledge.

Sworn to before me this
day of _____, 19__.

STATE OF NEW YORK,
County of _____, ss.:

On this _____ day of _____, 19__, before me personally came _____ and _____, to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same.

NOTE.—Duplicate originals of the foregoing certificate must be filed in the office of the clerk of the county in which the principal place of business of the corporation is located and in the office of the secretary of state. See § 64, Stock Corporation Law.

FORM No. 38.

Affidavit for Approval of State Comptroller on Reduction of Capital Stock.

See § 64, Stock Corporation Law.

STATE OF NEW YORK,
County of _____, ss.:

_____ being duly sworn, says: I am the _____ of the _____ Company, a stock corporation, other than a railroad or a moneyed corporation, organized under the laws of the State of New York; that a capital of _____ dollars* is sufficient for the proper purposes of said Company and is in excess of its ascertained debts and liabilities.

Sworn to before me this
day of _____, 19__.

* The amount of the reduced capital.

FORM No. 39.

Increase or Reduction of Par Value of Shares.

See § 65, Stock Corporation Law.

For forms of notice of meeting, consent of stockholders and certificate of consent or vote to increase or reduce the number of shares of the capital stock, see Forms Nos. 35, 36 and 37, which may be readily adapted. "The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate,* as required for the increase or reduction of its capital stock." § 65, Stock Corporation Law.

FORM No. 40.

Corporation Acknowledgment.

STATE OF NEW YORK, ss.:
County of _____,

On the _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resided in _____; that he is the [*president or other officer*] of the [*name of corporation*], the corporation described in and which executed the above instrument; that he knew the seal of said corporation;† that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[*Signature and title of official taking acknowledgement.*]

[SEAL.]

* Should be "certificates." See § 64, Stock Corporation Law.

† See note to § 11, General Corporation Law.

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